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Supreme Court, U.S.
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No. ________ OFFICE OF THE CLERK

In The

Supreme Court of the United States

OCTOBER TERM, 2002

John Robert Seelye,
Petitioner,

v.

Oklahoma Supreme Court,
Respondent.

ON CERTIORARI
TO THE OKLAHOMA SUPREME COURT

PETITION FOR WRIT OF CERTIORARI

John Robert Seelye, Petitioner
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August, 2002

139pp

A. Question presented for review.

Did the Oklahoma Supreme Court deny Petitioner due process of law under the 14th Amendment to the United States Constitution by entering an Opinion and Order taking a valuable property right from Petitioner in a summary-type proceeding that was not a judicial proceeding because lawful judicial authority was not present and could therefore not yield a lawful judgment?

B. Parties to the Proceedings below.

1. Oklahoma Supreme Court, Respondent.

2. Oklahoma Bar Association, party to proceeding below.

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D. Citations of Opinions and Orders entered in the case.

1. *Order of the Oklahoma Supreme Court dated February 12, 2002; published in Okla. Bar Journal, Vol. 73, No. 7, February 23, 2002 p. 535. (Not authorized for other publication.)* . . . . App. 3
2. *Order of the Oklahoma Supreme Court dated October 14, 1991. (Not authorized for publication.)* . . . . App. 5
3. *Opinion and Order of the Oklahoma Supreme Court dated October 26, 1971; 490 P.2d 1095.* . . . . . . App. 6

E. Statement as to Basis for Jurisdiction

(i) Dates of Orders and Judgments to be reviewed were entered:

February 12, 2002 (SCBD #4618), Order;
October 14,1991 (SCBD #2266), Order;
October 26, 1971 (SCBD #2266), Opinion and Order.

(ii) Date of Order respecting re-hearing: ***May 20, 2002.***

(iii) ***NA.***

(iv) Statute believed to confer jurisdiction on this Court to review the judgments or orders in question:

28 U.S.C. § 1257 (a).

(v) ***NA***

1. ***Although twice presented with a fair opportunity to address an important federal question, the Oklahoma Supreme Court refused to address the federal question.***

The 14th Amendment guarantees that a state cannot deprive a citizen of life, liberty, or property without due process of law. This court has ruled on many occasions, notably in *Cooper v. Reynolds* (US 1870) *10 Wall 308, 191 L.Ed. 93*, and *Pennoyer v. Neff* (US 1878*) 95 U.S. 714, 24 L.Ed. 565*, that if a court does not possess all components of jurisdiction it is not a *judicial* proceeding and does not have the lawful *judicial* authority to enter a *judgment* and any judgment entered therein is void and a denial of due process under the 14th Amendment to the United States Constitution.

And as a predicate to one seeking a Writ of Certiorari under *Supreme Court Rule 10 (c),* from a decision of the highest court of a state under the authority of *28 U.S.C. § 1257*, the *state court*, among other reasons, must have decided an important federal question in a way that conflicts with relevant decisions of this court. The Orders and Opinion sought to be reviewed were all entered by the Oklahoma Supreme Court, the highest court of the State of Oklahoma, hereinafter the state court.

This court has also ruled that in order to meet the requirement of *Supreme Court Rule 10 (c),* the federal question must have either been addressed by the state court, or presented to the state court in a manner which gave the court a fair opportunity to address the federal question. *Adams v. Robertson,* 1997, 520 U.S. 83, 117 S.Ct. 1028.

Here, the important federal question is whether the state denied Petitioner due process of law guaranteed by the 14th Amendment, by taking a valuable property right, *ie.*, the right to practice law, in a summary-type proceeding that was not a *judicial* proceeding because lawful *judicial authority* was not present and could therefore not yield a *judgment*?

In a Motion to Vacate the 1971 Opinion filed with the state court in 1991, Petitioner specifically challenged whether the necessary, threshold, jurisdictional, condition precedent was present in the 1971 proceeding that was required to vest the state court with all of the components of jurisdiction and therefore comply with the 14th Amendment guarantee. Although the state court was thereby presented with a fair opportunity to address the federal question, the court refused to address the federal question stating it had ***resolved*** the issue in its 1971 Opinion.

In a 2001-2002 Reinstatement proceeding, Petitioner again specifically challenged whether the necessary, threshold, jurisdictional, condition precedent was present in the 1971 proceeding that was necessary to vest the state court with all of the components of jurisdiction and therefore comply with the 14th amendment. Again, although the state court was presented with a fair opportunity to address the federal question, the state court refused to address the federal question, stating it had ruled in 1991 that it had ***considered*** the issue in its1971 Opinion.

There are no relevant or applicable state procedural rules that specify when or the manner of asserting a court's lack of jurisdiction in a summary-type proceeding with which we are here concerned, in which the state court has original and exclusive jurisdiction.

Having twice presented the federal question to the state court in a manner which gave the court a fair opportunity to address the federal question and in each instance *the state court* refused to address the federal question, the Petitioner, under *Adams v. Robertson, supra,* has complied with the requirements of *Supreme Court Rule 10 (c)* and established the basis for this court to consider this Petition for a Writ of Certiorari and review the subject Orders and Opinion. With all due respect to the state court, its 1971 Opinion clearly did not ***address, consider or resolve*** the federal question. Actually, the federal question was not even mentioned in that Opinion.

The Petitioner is well aware of the fundamental requirements of a Petition for Certiorari for *accuracy, brevity, and clarity,* and, after thirty-one years, would certainly not squander his one shot at Justice with anything less.

F. Constitutional provisions involved in the case.

The 14th Amendment to the United States Constitution states, *inter alia*, as follows:

> **U. S. Const. Amend. XIV**
>
> **Section 1.** All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

G. Statement of the Case.

Petitioner was admitted to the practice of law in Oklahoma on July 23,1957 and engaged in the private and public practice of law in Tulsa, OK from 1957 to 1971. In February, 1971, Petitioner was convicted of assault and battery with a dangerous weapon committed by two men at his request using a child's bat accidentally found during the assault. The assault was an enigma that had its genesis in a lover's triangle.

In October, 1971, the state court entered its Opinion and Order disbarring Petitioner. App. 6. The action was conducted under the limited jurisdictional authority of a summary-type disciplinary proceeding based solely on the conviction. The Opinion and Order of disbarment suggested Petitioner was represented by counsel but that recitation is not true. The person listed as counsel, now deceased, represented Petitioner only in the assault and battery matter, and never made an appearance of any kind in the disciplinary proceedings before the state court and was not employed or authorized to do so. Affidavit, App. 16, 48. At the time of his disbarment, Petitioner was incarcerated. In June, 1975, Petitioner was granted a Full Pardon of the conviction by the State of Oklahoma by and through its Governor, without objection.

On July 29, 1991, Petitioner filed a Motion to Vacate the Opinion and Order of disbarment in the 1971 proceeding on the ground the same was ***void***. App. 13. Petitioner asserted the state court had failed to require the presence of a necessary, threshold, jurisdictional, condition precedent when this same condition had been invoked to protect others similarly situated from such illegal proceedings and that Petitioner had been deprived of a valuable property right in a proceeding that was not a *judicial* proceeding because the state court did not have the lawful *judicial authority* to yield a *judgment*. App. 16. This was the first instance when Petitioner specifically raised the federal question concerning the 1971 proceeding. The Bar Association did not bother to file a Response and the state court quickly denied the Motion without a hearing. In its 1991 Order the state court refused to address the federal question stating the *issues* had been ***resolved*** in its 1971 Opinion and Order. App. 5.

In 2001, Petitioner filed a Petition for reinstatement. The state court referred the matter to a trial panel chosen solely by the Bar Association ostensibly to conduct a fair and impartial evidentiary hearing. The Bar Association challenged Petitioner at the hearing to explain why the 1971 Opinion and Order was *void*. App. 111. Petitioner responded citing the decision in *Oklahoma Bar Assoc. v. Jones (*OK 1977*)* 566 P.2d 139.

Petitioner's Brief in Chief, App. 50, filed with the court continued to assert the federal question, but to no avail.

The state court's 2002 Opinion again refused to address the federal question, stating, "On October 14, 1991, we issued an order denying the motion to vacate on the ground that the issues raised had been ***considered*** in the 1971 opinion..." (Emphasis added) App. 3. Petitioner was denied reinstatement without comment. Petitioner's Petition for Rehearing, App. 94, again raised the federal question but was denied by the state court in a one-page Order refusing to address the federal question. App. 9.

H. Arguments.

I. Under the applicable Rules Governing Disciplinary Procedure, before the Oklahoma Supreme Court was vested with the lawful judicial authority to yield a judgment, a necessary, threshold, jurisdictional, condition precedent must be present.

The Oklahoma Rules Governing Disciplinary Procedure, *Article IX, § 11*, Rules 1966, with which we are here concerned, provided, *inter alia*, as follows:

> Upon receipt of a certified copy of the record of conviction of a member of the Association of *a felony involving moral turpitude* . . . if such conviction is not a final conviction of record, why such member should not be suspended until such judgment of conviction has become final and thereafter disciplined. (Emphasis added)

The necessity of ***first*** satisfying this jurisdictional condition precedent to protect a member of the Bar from being subjected to an illegal summary-type disciplinary proceeding was clearly answered in, *Oklahoma Bar Association v. Jones,* supra. There the Oklahoma Supreme Court held, *inter alia,* as follows:

> Although the Rules have been amended since this proceeding was started, both the old and new Rules require that the crime *involve* moral turpitude *before* one may be disciplined in a summary proceeding . . . Although a formal proceeding to discipline respondent could have been conducted under *Art. 10 § 4(a)* Rules-Bar Association, in the summary-type disciplinary proceeding authorized by *§ 4(b)* and which are here involved, *an important condition precedent must be satisfied. That condition is a member must have been convicted of a crime involving moral turpitude.*
>
> For purposes of determining if there has been a conviction of a crime involving moral turpitude, *we cannot consider the surrounding circumstances. In deciding whether moral turpitude is involved we are limited to the charge contained in the documents permitted in the origination of the summary proceedings of § 4(b).* (Emphasis added)
>
> See Judgment and Sentence on Conviction, App. 10.

II. The necessary, threshold, jurisdictional, condition precedent was not satisfied at the time the Oklahoma Supreme Court entered its 1971 Opinion and Order in this matter.

The question of whether the *charge* of assault and battery *must* include the element of moral turpitude as an essential element without which a conviction cannot be had in every instance is answered by the plain language of the Oklahoma Legislature. *Title 21 Oklahoma Statutes, Section 643,* defines the crime of assault and battery with a dangerous weapon as follows:

> Every person who, with intent to do bodily harm and without justifiable or excusable cause, commits an . . . assault and battery upon the person of another with any . . . dangerous weapon . . . is guilty of a felony . . .

It is unquestionable that under the law of Oklahoma, the crime of assault and battery with a dangerous weapon does not *involve* the element of moral turpitude as an essential element without which a conviction cannot be had in every instance. See Judgment and Sentence on Conviction, App. 10.

Random House Webster's Unabridged Dictionary defines *"involve, involved, involving,"*, as *". . . to include as a necessary circumstance, condition, or consequence . . . being synonymous with 'include"*, which *Webster* defines as *"to take in or comprise as a larger aggregate or principle"*, stating that the shared meaning element is, *". . . to contain within as part of a whole"*.

Assault and battery is one of those crimes where moral turpitude may or may not be present, depending on the facts and circumstances of a given case. Thus under *Oklahoma Bar Assoc. v. Jones, supra,* it was incumbent on the state court to determine the presence of the necessary, threshold, jurisdictional, condition precedent to protect Petitioner from being subjected to an illegal summary-type disciplinary proceeding. If the condition has not been satisfied the state court did not have lawful *judicial* authority to yield a *judgment.* And under *Jones, supra*, the state court could not consider the facts and circumstances surrounding the incident. The Bar could have proceeded under the usual disciplinary process requiring a Hearing and evidence of unfitness to practice law, moral turpitude notwithstanding, but the Bar chose the *"short form"*.

Other courts have resolved this issue by consistently holding that moral turpitude is not an essential element of assault and battery and therefore cannot be said to be *involved* in such an offense, specifically in matters involving the discipline of a licensed professional. See the landmark case of *In re Rothrock*, (CA 1940) 106 P.2d 907, which involved a lawyer who pled guilty to assault and battery with a deadly weapon, a revolver, among other crimes. In seeking his disbarment in a summary-type proceeding with Rules essentially the same as here, the court said as follows:

> In the final analysis the purpose of any disbarment proceeding is not to punish the attorney — in case of criminal act he is amenable to punishment under the penal statutes –
>
> *That it did not involve moral turpitude in the particular case may be reflected by the record of conviction, which is all that is before the court in this proceeding.* (Emphasis added)

To the same effect as *Jones* and *Rothrock*, is the case of *Lorenz v. Board of Medical Examiners* (CA 1956), 298 P.2d 537. There the Board sought to discipline a physician under a procedure that makes the record of conviction of a crime involving moral turpitude sufficient to warrant the cancellation or suspension of the license to practice medicine. In reversing the judgment revoking the physician's license, the court held as follows:

> Under the plain language of section 2383, it is the conviction alone of an offense involving moral turpitude that *EMPOWERS* the board to suspend or cancel a license. Since the record of conviction is conclusive evidence of the unprofessional conduct, ***the circumstances in which the crime was in fact committed cannot be considered. Moral turpitude must be inherent in the crime itself to warrant cancellation or suspension of a license because of the conviction. In re Hallinan, 43 Cal.2d 243, 248-249, 272 P.2d 768, Moral turpitude is not inherent in the crime itself unless a conviction in every case would evidence bad moral character. Only if the minimum elements for a conviction***

> *necessarily involve moral turpitude and a conviction cannot be had without proof of facts showing moral turpitude, can the conviction be held to be of an offense involving moral turpitude.* (Emphasis added)
>
> We have concluded that the offense of giving an alcoholic beverage to a person under the age of 21 years *does not in every case evidence a bad moral character and that moral turpitude is therefore not inherent in the crime itself. Conviction alone, therefore, of such an offense does not warrant the suspension or cancellation of a license* under section 2383." (Emphasis added)

Inasmuch as under *Jones, Rothrock,* and *Lorenz,* the court cannot consider surrounding circumstances, the only reasonable and logical analysis would require that the element of moral turpitude be inherent in and an element necessary for a conviction of the crime of assault and battery in every case. Otherwise there would be nothing for the court to consider in evaluating Respondent's moral fitness to continue to practice law, which is the sole purpose of such a proceeding.

Also see *In re* Larkin, (CA 1989) 768 P.2d 604; *Hallinan v. State Bar,* (CA 1973) 505 P.2d 1369; *In re Higbie,* (CA 1975) 493 P.2d 97; *In re Johnson,* (AZ 1970) 471 P.2d 269; *Morrison v. State Board of Education,* (CA 1975) 461 P.2d 375; *Muniz v. State,* (TX 1978) 575 S.W.2d 208; *43 Harvard Law Review 117, 118.* "Almost all courts have construed the words as embracing every form of stealing, larceny, embezzlement, burglary, receiving stolen property, obtaining money under false pretenses, conspiring to defraud, and issuing a check without funds are all crimes involving moral turpitude."; and *24 Calif. Law Review, 9, 16,* the text writer states, "There is no hard and fast rule as to what constitutes moral turpitude . . . For example, an assault and battery may involve moral turpitude on the part of the assailant in one case and not in another."

For additional arguments on this question, the Court is referred to Petitioner's 1991 Brief on Motion to Vacate, App. 16.

III. A Court that does not possess all of the components of jurisdiction has no jurisdiction.

In *Cooper v. Reynolds*, *supra*, the United States Supreme Court recognized this fundamental principle of law in ***1870***, where the court decided as follows:

> It is as easy to give a general and comprehensive definition of the word 'jurisdiction' as it is difficult to determine, in special cases, the precise condition on which the right to exercise it depends. This right has reference to the power of the court over the parties, over the subject matter, over the *res* or property in contest, and to the authority of the court to render the judgment or decree which it assumes to make. *The power to render the decree or judgment which the court may undertake to make in the particular cause depends upon the nature and extent of the authority vested in it by law in regard to the subject matter of the cause.*(Emphasis added)

As stated in *Cooper*, *supra*, the *authority* vested in the state court by law in regard to the subject matter of the cause in a summary-type proceeding is clearly stated in Oklahoma Rules Governing Disciplinary Procedure, *Article IX, § 11*, Rules, 1966, *supra*.

Under the *authority* vested in the state court in regard to the subject matter in a summary-type proceeding, there must be a conviction of *a felony involving moral turpitude* as a necessary, threshold, jurisdictional, condition precedent to authorize the state court to proceed in such a matter. Otherwise, the court has no jurisdiction to do anything except to Dismiss the matter.

With the indulgence of the court, the question of whether a court has all of the components of jurisdiction so that the court, *"has jurisdiction"* in a given cause, is, to speak in the vernacular, rather like a woman being a *little bit pregnant*. Either she is *pregnant* or she isn't, *i.e.*, either the court *has jurisdiction* or it doesn't. *A little bit of jurisdiction* is not ***having jurisdiction.***

IV. Any Order or Judgment entered by a Court without all components of jurisdiction, other than Dismissal, is void.

Long before the enactment of the 14th Amendment, the courts of England, in the Colonies, and after the formation of the United States, recognized the maxim *coram non judice, ie.* "before a person not a judge" and its legal consequences. In *Burnham v. Superior Court of California (*US 1990) 495 U.S. 604, 110 S.Ct. 2105, a case involving *in personam* jurisdiction, the United States Supreme Court, speaking through Justice Scalia, stated as follows:

> The proposition that *the judgment of a court lacking jurisdiction is* ***void*** traces back to the English Year Books, see *Bowser v. Collins,* Y.B.Mich. 22 Edw. IV, f. 30, pl.11, 145 Eng. Rep. 97 (Ex.Ch. ***1482***), and was made settled law by Lord Coke in *Case of the Marshalsea,* 10 Coke Rep. 68b, 77A, 77 Eng. Rep. 1027 (K.B. ***1612***). Traditionally that proposition was embodied in the phrase *coram non judice,* 'before a person not a judge' – meaning in effect, that *the proceeding in question was not a judicial proceeding because lawful judicial authority was not present, and could therefore not yield a judgment.* American courts invalidated, or denied recognition to judgments that violated this common-law principle long before the Fourteenth Amendment was adopted. (Citing cases) In *Pennoyer v. Neff,* 94 U.S. 714, 24 L.Ed. 565 (***1878***), we announced that *the judgment of a court lacking personal jurisdiction violated the Due Process Clause of the Fourteenth Amendment* as well. (Emphasis added)

Thus, in order for any court to conduct a *judicial* proceeding with *lawful judicial authority* to yield a *judgment*, three criteria must be met. The court must possess, (1) jurisdiction over the subject matter, (2) jurisdiction over the person or *res*, and (3) jurisdiction to render the judgment which the court undertakes to make in a given cause. Any order or judgment by a court lacking any of these three criteria is not a *judicial proceeding* because *lawful judicial authority* was not present and could not therefore yield a *judgment*. See also, *Cooper v. Reynolds, supra.*

V. An action by the highest Court of a State is an action by the State for purposes of the 14th Amendment.

That the action of the state court in its official capacity is to be regarded as the action of the State of Oklahoma within the 14th Amendment, see. *Shelley v. Kraemer, Mich. & Mo.*(US 1948) 68 S.Ct. 836, 334 U.S. 1, 92 L.Ed. 1161.

VI. The right to practice law is a valuable property right protected by the 14th Amendment.

And that the right to practice law is a valuable property right which cannot be *taken* without due process of law, see *Conway v. State Bar* (CA 1989) 767 P.2d 657; *In re Delk* (N.C. App. 1991) 406 S.E.2d 601; *Weiner v. Fulton County.*(GA App. 1966) 148 S.E.2.d 145, 113 Ga. App. 343; certiorari denied 87 S.Ct. 393.

VII. Neither the 2002 Order of the state court, its 1991 Order, nor its 1971 Opinion and Order addressed the important federal question.

Petitioner directly asserted the federal question in the 2001-2002 proceeding. See Brief in Chief, App. 83, 91 and Petition for Rehearing, App. 94, 97. In its 2002 Order, the state court refused to address the federal question, stating, *inter alia:*

> [In 1991] . . . *we issued an order denying the motion to*

> *vacate on the ground that the issues raised had been* ***considered*** *in the 1971 opinion* . . . (Emphasis added)

Although the federal question was presented in a manner which gave the state court a fair opportunity to address the question, the court refused to address the question.

Petitioner also directly asserted the federal question in his 1991 Motion, App. 13, and his Brief in Support, App. 16, to Vacate the 1971 Opinion and Order of Disbarment. The 1991 Order of the state court, App. 5, refused to address the federal question and in denying Petitioner's Motion ruled, in part, as follows:

> . . . the issues raised by respondent have been previously ***resolved*** by the Court's opinion in . . . [1971] (Emphasis added)

The state court had thus refused to address the federal question presented in a manner which gave the court a fair opportunity to address the federal question.

The text of the 1971 Opinion and Order of disbarment in *Oklahoma Bar Association v. Seelye,* (OK 1971) 490 P.2d 1095, App. 6, in part parenthetically expressed, states as follows:

> *(1) [The Bar Association filed a report in March, 1971* ***alleging*** *Petitioner had been convicted of assault and battery and that it was a felony involving moral turpitude.]*
>
> *(2) [The Bar Association gave notice to Petitioner to appear at their hearing.]*
>
> *(3) [Petitioner was advised to show cause why the Bar should not transmit the Judgment and Sentence on Conviction to the state court.]*
>
> *(4) [The state court suspended Petitioner from the practice of law pending an appeal.]*
>
> *(5) [The conviction was affirmed on appeal.]*
>
> *(6) [The Bar Association filed a report in September, 1971* ***praying*** *that Petitioner be disbarred.]*

(7) Article IX, § 11 of the rules (1966) [citing] require that the conviction ***must*** *be of a felony involving moral turpitude].*

(8) The Board of Governors has complied with all directions set forth in the above Article IX § 11, so that due process has been completed.

(9) [The ***recommendation*** *of the Bar Association [in its September, 1971 report] is approved.]*

(10) [The **prayers** *of the Bar were answered and petitioner was disbarred.]* (Emphasis added)

The Judgment and Sentence on Conviction referred to in the 1st paragraph of this Opinion, Exhibit "A" to the Bar Association's Report, is shown in full at App. 10, which was the ***only*** evidence on which the court could and did base its Opinion and Order.

Contrary to what the state court said in the 1991 Order and the 2002 Order, the 1971 Opinion is completely vacuous on whether the court either *considered, resolved, decided, or addressed* the federal question. It did not even mention the federal question. If the state court *considered, resolved, decided, or addressed* the federal question in its 1971 Opinion, it must have done so in secret. *Westlaw's* Headnote to the contrary notwithstanding, the Opinion of the state court ***did not consider, resolve, decide, nor address*** the fundamental question of whether the crime of assault and battery with a dangerous weapon is a crime involving moral turpitude. The Bar ***alleged*** that it was a crime involving moral turpitude, but the court did not make any finding or *judicial decision* that assault and battery involves moral turpitude as an inherent and essential element without which a conviction cannot be had in every instance.

The state court **only** adopted the ***recommendation*** of the Bar Association to disbar the Petitioner. The Bar "*saying - alleging*" that assault and battery involves moral turpitude is rather like the comment attributed to *A. Lincoln,* who, as a young lawyer in Illinois addressing a jury on the veracity of a witness, is reported to have said; *"A person saying a calf has five legs doesn't mean the calf actually has five legs. That's just what the person said."* Not to be excessively rudimentary, but the critical issue is not what the Bar ***alleged***, but that which the court found, and on which it made a *judicial decision*. The court has never made a *judicial decision* on this matter. The comment by the court that the Bar Association had complied with due process obviously only relates to their *administrative* due process. Under *Cooper v. Reynolds, supra*, it was incumbent on the state court to inquire into and confirm that all of the components of ***the court's*** jurisdiction had been satisfied, especially in a matter where it has *limited* jurisdictional authority.

In the absence of jurisdiction, the 1971 proceeding was not a *judicial* proceeding and the Opinion and Order was not a *lawful* judgment. The Opinion and Order are ***void*** and should be vacated by this court. With that, the 1991 Order and 2002 Order become moot. *Cooper v. Reynolds, supra; Pennoyer v. Neff, supra; Burnham v. Superior Court of California, supra; Oklahoma Bar Assoc. v. Jones, supra, Oklahoma Rules Governing Disciplinary Procedure, supra.*

CONCLUSION

Petitioner is not suggesting that this court should review the disciplinary vagaries of every State in the Union. That is not the issue presented to the court. The only question involved in this matter is the federal question of the denial of due process of law by a state in the taking of a valuable property right that is protected by the 14th amendment.

After five proceedings before the state court and thirty-one years later, it is distressingly obvious that for whatever reasons, monetary, political, or otherwise, and notwithstanding Petitioner's stellar academic, public and professional accomplishments, the state court will ***never*** honor nor respect the Constitutional rights of the Petitioner. Although not likely to be addressed by this court, it should be clear, however, that none of these proceedings have really been about the Petitioner's fitness to practice law. But for this one egregious act, Petitioner has an impeccable 70-year record. Both Counsel for the Bar and the Trial Panel admitted to the state court that Petitioner's record for the past 32 years was impeccable. Numerous investigations conducted by the Bar over the past five decades have not produced a *sciltilla* of evidence evincing Petitioner's unfitness other than the one incident. So, what's the problem? The Rules and the law notwithstanding, these proceedings have only been about *retribution*, not fitness to practice law. An examination of the Transcript of the Hearing before the Bar's Trial Panel would confirm ~~this~~ assertion. With the state court and the Bar committed to a concerted, invidious denial regardless of the evidence presented, *a fortiori,* the Petitioner has no other option but to seek redress in this *Court of Last Resort,* recognizing that Certiorari is rarely granted. Otherwise the public will have lost one of its most capable advocates. On a more practical note, Petitioner probably doesn't have another 31 years to *joust with Windmills in Oklahoma.*

Petitioner well remembers the words of his perspicacious Freshman Law School Professor, *Professor Phillip Landa*, who, in his crisp, heavy, Russian-Jewish accent, would have said of the 1971 Opinion, *"It is like a dead limb on the judicial tree that can be lopped off at any time"* ***Now's a good time!***

Respectfully submitted,
John Robert Seelye, Petitioner
John Robert Seelye, *pro se*
7635 Taft Road
Muskogee, OK 74401
(918) 683-2911

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APPENDIX
TO
PETITION
FOR WRIT OF CERTIORARI

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IN THE SUPREME COURT
OF THE STATE OF OKLAHOMA

IN THE MATTER OF THE)
REINSTATEMENT OF) SCBD #4618
JOHN ROBERT SEELYE, TO) FOR
MEMBERSHIP IN THE OKLAHOMA) PUBLICATION
BAR ASSOCIATION AND TO THE) IN O.B.J. ONLY
ROLL OF ATTORNEYS.)

ORDER
(FILED STAMPED: FEB 12 2002)

¶1. On October 26, 1971, John Robert Seelye (Seelye/attorney), was disbarred following his conviction for assault and battery with a dangerous weapon. The attorney's 1977 petition for reinstatement in 1977 was denied. Later, the attorney sought to practice law in Oklahoma by filing a motion to vacate the 1971 order of disbarment and to dismiss disciplinary proceedings on jurisdictional grounds. On October 14, 1991, we issued an order denying the motion to vacate on the ground that the issues raised had been considered in the 1971 opinion disbarring the attorney. The current attempt at reinstatement began with the attorney's petition filed on May 16, 2001. On August 2001, a hearing was held before the Trial Panel of the Professional Responsibility Tribunal (trial panel). Finding that the attorney had not presented clear and convincing evidence sufficient to support reinstatement, the trial panel issued a report on November 6, 2001, recommending that the attorney not be reinstated. Upon a de novo review,

THE COURT DETERMINES THAT:

1) This Court has exclusive jurisdiction exercising de novo review over any reinstatement proceedings. [Matter of Reinstatement of McKenzie, 1996 OK 72, ¶2, 925 P.2d

18; State ex rel, Oklahoma Bar Ass'n. v. Samara, 1984 OK 32, ¶16, 683 P.2d 979];

2) The constitutional duty to oversee the practicing bar to insure that its members are fit to practice law rests with this Court. [State ex rel, Oklahoma Bar Ass'n. v. Busch, 1996 OK 38, ¶29, 919 P.2d 1114]

3) The attorney has not presented clear and convincing evidence sufficient to support reinstatement. [Rule 11.4, Rules Governing Disciplinary Proceedings, 5 O.S. 1991, Ch. 1, App. 1-A];

4) Reinstatement should be denied; and

5) Costs of $1,676.56 should be imposed. [Rule 11.1(c), Rules Governing Disciplinary Proceedings, 5 O.S. 1991, Ch. 1, App. 1-A].

¶2 IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the application of John Robert Seelye for reinstatement of his license to practice law is hereby denied. Costs of $1,676.56 should be imposed.

¶3 DONE BY ORDER OF THE SUPREME COURT IN CONFERENCE THIS 11th DAY OF FEBRUARY, 2002.

/s/__Richard Hargrave______
CHIEF JUSTICE

HARGRAVE, C.J., HODGES, LAVENDER, KAUGER, SUMMERS, BOUDREAU, WINCHESTER, J.J. concur.

WATT, V.C.J., OPALA, J. dissent.

IN THE SUPREME COURT
OF THE STATE OF OKLAHOMA

STATE OF OKLAHOMA, ex rel,)
Oklahoma Bar Association,)
Complainant,)
)
vs.) No. SCBD 2266
)
John Robert Seelye,)
Respondent,)

ORDER

Upon due consideration of the Motion to Vacate Judgment and Dismiss Proceedings filed herein by respondent, and upon review of the arguments and authorities in support thereof, together with a review of the record herein, the Court finds the issues raised by respondent have been previously resolved by the Court's opinion in *State ex rel. Oklahoma Bar Association v. Seelye,* 490 P.2d 1095 (Okl. 1971). Respondent's motion should be and it is hereby DENIED.

DONE BY ORDER OF THE SUPREME COURT IN CONVERENCE THIS 14th DAY OF OCTOBER, 1991.

s/s Marion Opala
CHIEF JUSTICE

Opala, C.J., Hodges, V.C.J., Lavender, Doolin, Hargrave, Wilson, and Kauger, JJ. – concur.
Summers, J. – concurs in result.
Simms, J. – not participating.

IN THE SUPREME COURT
OF THE STATE OF OKLAHOMA

STATE ex rel, OKLAHOMA
BAR ASSOCIATION,

COMPLAINANT,

v.

JOHN ROBERT SEELYE,

RESPONDENT,

S.C.B.D. No. 2266
Supreme Court of Oklahoma
October 26, 1971.

Paul Vassar, Oklahoma City, for Complainant.

Irvine E. Ungerman, Tulsa, for Respondent.

DAVISON, Vice Chief Justice.

[1] The report of the Board of Governors of the Oklahoma Bar Association shows that on or about February 26, 1971, the respondent received a judgment and sentence, on conviction of a felony involving moral turpitude, to wit: assault and battery with a dangerous weapon. The sentence was rendered by the District Court in and for Tulsa County, Oklahoma, in No. CRF-70-1758 and was for a period of five (5) years in the State penitentiary.

[2] That thereafter the Board of Governors, pursuant to Article IX, Section 11 of the Rules creating and controlling the regulations of the Oklahoma Bar Association, directed said respondent to appear before the Board of Governors on March 19, 1971, at 1:30 P.M. at the Oklahoma Bar Center, 1901 North Lincoln Boulevard, Oklahoma City, Oklahoma, that said notice

to appear was given by the Board of Governors of the Oklahoma Bar Association, not less than ten (10) days after receipt of the certified copy of the record of conviction above referred to.

[3] That in said notice the respondent was directed to show cause, if any he had, why said record of conviction should not be transmitted to this court with a recommendation that if said conviction is a final judgment on conviction, that respondent be disciplined. Respondent did not appear nor respond to such notice.

[4] Thereafter, on April 2, 1971, by order of this court, the respondent was suspended from the practice of law in this State, pending the outcome of an appeal of said judgment and sentence by the Court of Criminal Appeals of the State of Oklahoma.

[5] That on or about August 31, 1971, by order of the Court of Criminal Appeals overruled the respondent's motion for a new trial and issued its mandate, sustaining said judgment and sentence.

[6] That on the 20th day of September, 1971, the Board of Governors of the Oklahoma Bar Association filed its written recommendation in this court praying that the respondent be disbarred. On the same date said recommendation was mailed to Irvine E. Ungerman, attorney for respondent, 625 Wright Building, Tulsa, Oklahoma, and to the respondent, c/o Oklahoma State Penitentiary, McAlester, Oklahoma, where respondent was incarcerated. No response has been filed by either party.

[7] Article IX § 11, of the rules (1966) creating, controlling and regulating the Oklahoma Bar Association, provides, in part, as follows:

> "Upon receipt of a certified copy of the record of conviction of a member of the Association of a felony involving

moral turpitude, * * * if said conviction is not a final conviction of record, why said member should not be suspended until said judgment of conviction has become final and thereafter disciplined * * *"

[8] The Board of Governors has complied with all directions set forth in the above Article IX, § 11, so that due process has been completed.

[9] We are of the opinion that the recommendation of the Board of Governors should be and is hereby approved.

[10] It is the order of this court that respondent, John Robert Seelye, be disbarred.

[11] It is further ordered that notice of such disbarment be given by the Clerk of this Court to the various parties, boards and agencies, as provided for in Article VII, Part 1, Section 20(f).

[12] All the Justices concur.

IN THE SUPREME COURT
OF THE STATE OF OKLAHOMA

IN THE MATTER OF THE)
REINSTATEMENT OF JOHN)
ROBERT SEELYE TO MEMBERSHIP) S.C.B.D.
IN THE OKLAHOMA) No. 4618
BAR ASSOCIATION)
AND IN THE ROLL OF ATTORNEYS.)

ORDER

(Filed May 20, 2002)

The motion for oral argument by petitioner, John Robert Seelye, is hereby DENIED.

The petition for rehearing by petitioner, John Robert Seelye, is hereby DENIED.

DONE BY ORDER OF THE SUPREME COURT IN CONFERENCE THIS 20th DAY OF MAY, 2002.

/s/ Richard Hargrave

CHIEF JUSTICE

HARGRAVE, D.J., HODGES, LAVENDER, JAUGER, SUMMERS, BOUDREAU, WINCHESTER, JJ. - Concur

WATT, V.C.J., OPALA, JJ. - Dissent

EXHIBIT "A"

IN THE DISTRICT COURT OF THE
14th JUDICIAL DISTRICT
OF THE STATE OF OKLAHOMA,
Sitting in and for Tulsa County, Oklahoma

THE STATE OF OKLAHOMA	)	SS.
TULSA COUNTY	)	

THE STATE OF OKLAHOMA	)	
Plaintiff	)	
	)	No. CRF-70-1785
JOHN ROBERT SEELYE	)	
Defendant	)	

JUDGMENT AND SENTENCE ON CONVICTION

Now, on this 26 day of FEB, 1971, the same being a juridical day of said court, and the time duly appointed for judgment in the above-entitled cause, and said cause coming on for judgment, and the defendant, JOHN ROBERT SEELYE (Represented by I. Ungerman), being personally present in open court, and being duly represented at all appearances before the court by his attorney of record, and having been legally charged with the offense of ASSAULT AND BATTERY WITH A DANGEROUS WEAPON and having been duly informed of the nature of the charge and having been duly arraigned thereon, and having duly and properly pleaded not guilty to said offense after having been duly advised of his rights; and having been duly and legally tried and convicted of the crime of ASSAULT AND BATTERY WITH A DANGEROUS WEAPON and the defendant having been asked by the court whether he has any legal cause to show why judgment and sentence should not be pronounced against the defendant, and none appearing to the court, it is the judgment of the court that said defendant is guilty of the crime of ASSAULT AND BATTERY WITH A DANGEROUS WEAPON.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED BY THE COURT that the said defendant JOHN ROBERT SEELYE be, and he hereby is sentenced to serve a term of FIVE (5) YEARS for the crime of ASSAULT AND BATTERY WITH A DANGEROUS WEAPON and he is hereby ordered committed to the custody of the Department of Corrections of the State of Oklahoma for classification and assignment by said Department to an institution or facility operated by or under the jurisdiction of said Department. The term of sentence to begin at and from the delivery of the defendant to said Department at the Oklahoma State Penitentiary at McAlester, Oklahoma. It is further ordered that said defendant pay the costs of this prosecution, taxed at $____________, for which judgment is hereby rendered against the defendant; and thereupon the defendant is by the court notified of his right to appeal.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the court that the Sheriff of Tulsa County, Oklahoma, transport said defendant to the said State Penitentiary at McAlester, Oklahoma, and that the Warden of said penitentiary detain the said defendant according to this judgment, under the seal of the court, and deliver to the Sheriff of Tulsa County, Oklahoma, two copies of this judgment, sentence and order, one of the copies to accompany the body of the said defendant to said penitentiary at McAlester, Oklahoma, and to be left therewith at the said penitentiary, said copy to be warrant and authority for the imprisonment of the said defendant and the other copy to be the warrant and authority of said Sheriff of Tulsa County, Oklahoma, for the transportation and imprisonment of the said defendant as hereinabove provided. Said last named copy to be returned to the Clerk of said Court with the proceedings thereunder endorsed thereon.

/s/ Fred Nelson
District Judge

Attest:
DON AUSTIN, Court Clerk
By /s/ Mike Barkley
Deputy Court Clerk

THE STATE OF OKLAHOMA)
TULSA COUNTY) SS.

I, SAMUEL W. FRY, Court Clerk of the District Court of the ________ Judicial District of the State of Oklahoma, sitting in and for Tulsa County, Oklahoma, do hereby certify the above and foregoing to be a true, correct, full and complete copy of the original judgment and sentence in the case of the State of Oklahoma vs. JOHN ROBERT SEELYE, as the same appears of record in my office.

WITNESS my hand and official seal this 26 day of FEB, 1971.

[SEAL}

DON AUSTIN, Court Clerk

By /s/ Mike Barkley
Deputy Court Clerk

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

STATE OF OKLAHOMA, ex rel.,)
OKLAHOMA BAR ASSOCIATION,)
Complainant,)
) S.C.B.C. No.2266
JOHN ROBERT SEELYE,)
Respondent.)

MOTION TO VACATE JUDGMENT AND DISMISS PROCEEDING

(Filed July 29, 1991)

COMES NOW the Respondent JOHN ROBERT SEELYE and moves the Court to vacate, set aside, and hold for naught the Judgment entered herein on October 26, 1971, and the Order of Suspension entered herein on April 2, 1971, and to Dismiss the within proceeding, because this Court did not have the jurisdiction to render either the Order or the Judgment.

This proceeding was initiated by the Complainant as a Summary-type Disciplinary Proceeding under the then applicable Rules creating, controlling and regulating the Oklahoma Bar Association, 1966, Article X, Section 11, solely on the basis that Respondent had been convicted of the crime of Assault and Battery with a Dangerous Weapon by the District Court of Tulsa County, Oklahoma. Respondent was then and had been an active member in good standing of the Oklahoma Bar Association since inscribing his name on the Roll of Attorneys of the Oklahoma Supreme Court on July 23, 1957. As a consequence of such Complaint this Court entered an Order Suspending Respondent from the practice of Law on April 2, 1971, and a Judgment of Disbarment on October 26, 1971. Notwithstanding the Order and Judgment, Article X, Sec. 11

of the Bar Rules provided that a necessary and fundamental condition precedent to either the initiation of a proceeding, or empowering this Court to discipline a member thereunder, the crime of which a member may have been convicted must have been one "involving moral turpitude". As a matter of law, the crime of Assault and Battery, either with or without a dangerous weapon, does not include "moral turpitude" as an inherent and necessary element thereof. The Judgment and Sentence on Conviction was the only "record" presented to this Court by the Bar in support of its Complaint. Without having satisfied this necessary and fundamental condition precedent this Court was powerless to have disciplined Respondent in any manner and should have Dismissed the Complaint, as the Court did not have the jurisdiction to render the Order or the Judgment it assumed to make, and, as such, both the Order and the Judgment are void ab initio and must be vacated and this proceeding Dismissed. Respondent should be allowed to re-inscribe his name on the Roll of Attorneys, Complainant ordered to reinstate Respondent as a member in good standing as of April 2, 1971, with all dues or assessment Respondent would have been required to pay Complainant during the twenty-year period of his having been wrongfully deprived of the right to practice his profession ordered waived, all records of such wrongful Suspension and Disbarment be completely expunged and all reasonable costs incurred by Respondent in removing such wrongful Disbarment be assessed against Complainant.

Dated this 31st day of July, 1991.

/s/ John Robert Seelye
John Robert Seelye, Respondent

/s/ Fred Head
Fred Head

Attorney for Respondent
P.O. Box F.H.
Athens, Texas 75751
Phone 903/675-5111
Fax 903/675-5619
State Bar Card No.09319000

IN THE SUPREME COURT OF THE
STATE OF OKLAHOMA

STATE OF OKLAHOMA, ex rel.,)
OKLAHOMA BAR ASSOCIATION,)
Complainant,)
) S.C.B.C. No.2266
JOHN ROBERT SEELYE,)
Respondent.)

(Filed July 29, 1991)

RESPONDENT'S BRIEF IN SUPPORT OF MOTION TO VACATE JUDGMENT AND DISMISS PROCEEDING

Fred Head, Attorney for Respondent
P.O. Box FH
106 South Prairieville
Athens, Texas 75751
Phone 903/675-5111
Fax 903/675-5619
State Bar Card No. 09319000

SUMMARY-TYPE DISCIPLINARY PROCEEDING

(INDEX OMITTED)

STATEMENT OF THE CASE

The within matter is a summary-type Disciplinary Proceeding initiated by Complainant, Oklahoma Bar Association against Respondent, an active member in good standing of the Bar, under Article X, Section 11, of the Rules, 1966, creating, controlling, and regulating the Oklahoma Bar Association. The entire "record" transmitted to the Court in support of said Complaint consisted of a copy of a Judgment and Sentence on Conviction entered by the District Court of the 14th Judicial District of the State of Oklahoma on February 26, 1971, in Case No. CRF-70-1758, styled State of Oklahoma, Plaintiff, vs. John Robert Seelye, Defendant, for the crime of Assault and Battery with a Dangerous Weapon. Pursuant to said Complaint this Court rendered an ex parte Order on April 2, 1971, Suspending Respondent from the practice of law, and on October 26, 1971, its ex parte Judgment of Disbarment.

Although the name of Irvine E. Ungerman appears on the record as counsel for Respondent in the original proceedings before Complainant and in this Court, Respondent was never represented by Mr. Ungerman herein, nor was Mr. Ungerman employed or authorized to do so. Mr. Ungerman's only authorized act was to send a letter to Complainant requesting the continuance of an earlier hearing due to Respondent's illness and inability to attend, enclosing a statement to that effect from Respondent's physician. The request was summarily denied. Mr. Ungerman never appeared on behalf of Respondent at any hearing on the merits of this matter, nor did he file any pleadings, documents, or briefs on behalf of Respondent herein, nor did he offer any witnesses or other evidence on Respondent's behalf, nor did he make any oral argument on behalf of Respondent either before Complainant or the Court. Respondent was neither present nor represented by any counsel at any time during either the Complainant's or the Court's consideration of this matter. All such proceedings were conducted ex parte with Complainant as the only appearing party. Respondent's Affidavit to this effect is attached as Exhibit "A", and incorporated herein by reference.

PROPOSITION NO. 1.

THE SUPREME COURT DOES NOT HAVE THE JURISDICTION TO DISCIPLINE A MEMBER OF OKLAHOMA BAR ASSOCIATION IN A SUMMARY-TYPE PROCEEDING BY ARTICLE 10, SECTION 11 OF THE 1966 RULES CREATING, CONTROLLING AND REGULATING THE BAR UNLESS THE MEMBER HAS BEEN CONVICTED OF A FELONY INVOLVING MORAL TURPITUDE AND, IF IN SUCH A PROCEEDING, THE COURT, NONETHELESS, PURPORTS TO RENDER AN ORDER OF SUSPENSION AND CONSEQUENT JUDGMENT OF DISBARMENT, WHEN, AS A MATTER OF LAW, THE SUBJECT CRIME DOES NOT INVOLVE MORAL TURPITUDE AS AN INHERENT, ESSENTIAL ELEMENT THEREOF, SUCH ORDER AND JUDGMENT EXCEED THE COURT'S JURISDICTION, ARE VOID AB INITIO, AND UPON ATTACK SHOULD BE VACATED AND THE PROCEEDING DISMISSED.

It is axiomatic in American jurisprudence that a Court must possess all aspects of jurisdiction in a particular cause before it can render a valid judgment. Without complete jurisdiction, any Order or Judgment rendered by a Court, other than a Dismissal, is merely an empty ceremony. It is, as we learned in Law School, "like a dead limb on the Judicial Tree which can be lopped off at any time." Jurisdiction consists of three aspects; jurisdiction over the subject matter, jurisdiction over the person, or res, and jurisdiction to render the Judgment which the Court undertakes to make in the particular cause. It follows that *any Order or Judgment by a Court which is lacking in either of these three aspects, is simply beyond the jurisdiction of the Court, a nullity, and no amount of time can breathe life into a Judgment that was a "dead horse" from the beginning.*

The United States Supreme Court clearly stated this fundamental principle of law in the 1870 case of COOPER V. REYNOLDS, 10 Wall, 308, 19 L.Ed. 93, wherein the Court stated as follows:

> "It is as easy to give a general and comprehensive definition of the word 'jurisdiction' as it is difficult to determine, in special cases, the precise conditions on which the right to exercise it depends. *This right has reference to the power of the court over the parties, over the subject-matter, over the res or property in contest, and to the authority of the court to render the judgment or decree which it assumes to make."*
>
> * * * *
>
> *"The power to render the decree or judgment which the court may undertake to make in the particular cause depends upon the nature and extent of the authority vested in it by law in regard to the subject matter of the cause."* (Emphasis added)

Respondent concedes that in this cause the Supreme Court has jurisdiction of the subject matter, disciplining member of the Bar, and jurisdiction of the person, the Respondent, but submits that the Supreme Court did not have the jurisdiction to render the Order of Suspension or the Judgment of Disbarment which it assumed to make in this cause.

The Complainant, Oklahoma Bar Association, initiated these proceedings against Respondent under Article X, Section 11, of the then applicable Rules (1966) creating, controlling and regulating the Bar, which provide as follows:

> "Upon receipt of a certified copy of the record of conviction of a member of the Association of a *felony involving moral turpitude* * * * if such conviction is not a final conviction of record, why such member should not be suspended until such judgment of conviction has become final

and thereafter disciplined * * * (Emphasis added)

The only document relied upon by the Bar in support of its Complaint was a Judgment and Sentence on Conviction for the crime of Assault and Battery with a Dangerous Weapon, which constitutes the entire "record" this Court may consider in determining if it had jurisdiction to render its Order of Suspension and consequent Judgment of Disbarment. There was no investigation by the Bar of the facts and circumstances relating to the crime, nor what the Respondent is alleged to have done which resulted in the conviction, nor possible motivations, or mitigating circumstances, nor his reputation in the community, his academic achievements in Law School, his reputation and abilities as a practicing Attorney, his contributions to society and his community, his Church work as a Teacher, his role as a father of four children, the support and stability of this family, his over-all good character, nor his moral fitness to continue to practice Law; there was no hearing concerning these possible factors by the Bar and there was no findings regarding these matters by the Bar. And, obviously, none of such factors were before, or even considered by this Court. The singular basis of the Complaint and that which was alleged to authorize the initiation of this proceeding to discipline Respondent was his having been convicted of the crime of Assault and Battery with a dangerous weapon.

Respondent concedes he was convicted of the crime shown on the subject Judgment and Sentence and that it is a felony. *However, the mere conviction of a felony, although invidious per se, is not sufficient to either authorize the Bar to initiate summary-type proceedings under Art. X, § 11 of the Bar-Rules, or to vest jurisdiction in this Court to proceed with any disciplinary action against Respondent, unless the felony be one involving moral turpitude.* According to the decision of this Court in Oklahoma Bar Association v. Jones, 1977, 566 P.2d

130, where the Bar relied on an essentially similar, though later, version of the Bar Rules, this Court held as follows:

> "Although the Rules have been amended since this proceeding was started, *both the old and new Rules require that the crime involve moral turpitude BEFORE one may be disciplined in a summary proceeding.*" (Emphasis added)

* * * *

> "Although a formal proceeding to discipline respondent could have been conducted under Art 10, § 4(a) Rules-Bar Association, *in the summary-type disciplinary proceeding authorized by § 4(b) and which are here involved, AN IMPORTANT CONDITION PRECEDENT MUST BE SATISFIED. THAT CONDITION IS A MEMBER MUST HAVE BEEN CONVICTED OF A CRIME INVOLVING MORAL TURPITUDE.*" (Emphasis added)

Notwithstanding the Bar Rules applicable here were not identical with the Rules applicable to *Jones*, this Court nonetheless clearly ruled that *both versions* of the Rules *require* the satisfaction of the condition precedent *before* a member may be disciplined by a summary-type proceeding. That's the law!

A "condition precedent", whether it relates to the authority of a court to exercise jurisdiction in a cause, or, to the vestiture of an estate in property, is an absolute estoppel to either the vesting of the estate, or the further exercise of authority by a court inasmuch as the prior satisfaction of the "condition" is mandatory. It is inescapable! Unless or until the "condition" has been met, nothing – nothing – changes. Neither can the estate vest nor the court proceed further. The "condition" is a complete barrier. Until the restraints of the "condition" are freed, the court is powerless. Clearly then, under *Jones, supra*, it is an essential and fundamental condition precedent in a summary-type disciplinary proceeding that THE CRIME *MUST*

INVOLVE MORAL TURPITUDE *BEFORE* ONE MAY BE DISCIPLINED THEREBY, and *IF SUCH CRIME DOES NOT INVOLVE MORAL TURPITUDE THE COURT DOES NOT HAVE AUTHORITY TO PROCEED FURTHER WITH DISCIPLINARY ACTION AND THE CASE MUST BE DISMISSED FOR WANT OF JURISDICTION.* In the Jones case this Court found that the crime there did not "involve moral turpitude" and DISMISSED THE PROCEEDING.

The pivotal question to be addressed therefore, is whether the crime of Assault and Battery "involves moral turpitude" as an element thereof, and that question is now present for the first time in this case. Neither "res judicata", nor "estoppel" are applicable because the Court could not legitimize (sic) its lack of jurisdiction merely by having rendered a prior Judgment herein. Neither any action nor inaction on Respondent's part could serve to confer jurisdiction. Jurisdiction is something the Court either has, or it doesn't, as a matter of law. And, on the same premise, if the Court did in fact not have the authority to render the Judgment it purported to render in this case, Respondent could NEVER be estopped from attacking such a judgment. Unlike ham or bacon, jurisdiction cannot be cured by the passage of time. If this Court erred in this matter, it is the COURT'S DUTY to correct it's mistake. To do Justice! Could Complainant argue because Respondent has not heretofore raised this issue, that after the passage of twenty years, he is now estopped to question the very power of the Court to do what it purported to do in 1971? Has Respondent's inaction in this regard somehow prejudiced the Complainant? Has a "wrong" somehow magically turned into a "right" merely by the passage of time? Hardly! To the contrary, it is Respondent who has been grievously and irrevocably prejudiced by the wrongful exercise of power by this Court and the passage of ETERNITY could not validate the Court's action herein. If the Court did not have jurisdiction to discipline the attorney in Jones, supra, because the crime did not involve moral turpitude, the Court did not have the jurisdiction to discipline Respondent unless Assault and Battery can be said to involve moral turpitude as an inherent, essential element as a matter of law.

In considering the question of whether assault and battery "involves moral turpitude", the Court is limited to that which appears on the face of the Judgment and Sentence, as this Court further held in *Jones, supra*, as follows:

> "For the purpose of determining if there has been a conviction of a crime involving moral turpitude, WE CANNOT CONSIDER THE SURROUNDING CIRCUMSTANCES. IN DECIDING WHETHER MORAL TURPITUDE IS INVOLVED, WE ARE LIMITED TO THE CHARGE CONTAINED IN THE DOCUMENTS PERMITTED IN THE ORIGINATION OF THE SUMMARY PROCEEDINGS OF § 4(b).: (Emphasis added)

Therefore, inasmuch as the *"Charge" contained in the Originating Documents, here the Judgment and Sentence,* is merely the words "Assault and Battery with a Dangerous Weapon'", and that is the only "originating document" relied upon by Complainant, under the doctrine of Jones, that is all the Court could consider, ie., the words, "Assault and Battery with a Dangerous Weapon." That is to say, the facts and circumstances of this particular crime are not before the Court and cannot be considered by the Court in deciding this fundamental question. *Nothing else whatsoever* can be considered by the Court. This Court does not know HOW the Assault and Battery was alleged to have been committed; the Court does not know the MANNER in which the crime was Alleged to have been committed; the Court does not know WHAT WEAPON was alleged to have been used; the Court does not know whether Respondent is alleged to have used any weapon; the Court does not know whether the alleged weapon was one that is considered as being DANGEROUS PER SE, such as a gun, or DANGEROUS MERELY BECAUSE OF THE MANNER OF USE, such as a shoe; the Court does not know if the crime was alleged to have been committed with INTENT to harm the person who was harmed; this court does not know if the alleged "intent" was to harm some other person and the "intent" was "transferred" to the person actually harmed; this court does not know if the "legal intent" was alleged to have been imputed to Respondent by reason of his NEGLIGENCE; this court does not know if the FORCE alleged to have been used to harm some person was "DIRECT FORCE", or that the harm resulted by a FORCE or substance alleged PUT IN MOTION, or how or by whom and the court does not know the EXTENT OR NATURE of the alleged harm to the victim. That is what the court DOES NOT KNOW! So, what does the court know? Seven (7) words: "Assault and Battery with a Dangerous Weapon." THAT IS ALL THE COURT KNOWS!

To the same effect as Jones, is the case of *Lorenz v. Board of Medical Examiners* (1956) Sup.Ct.Calif., 298 P.2d 537. There the Board sought to discipline a physician under a procedure that makes the record of conviction of a crime involving moral turpitude sufficient to warrant the cancellation or suspension of the license to practice medicine. In reversing the judgment revoking the physician's license, the Supreme Court held as follows:

> "Under the plain language of section 2383, it is the conviction alone of an offense involving moral turpitude that *EMPOWERS* the board to suspend or cancel a license. Since the record of conviction is conclusive evidence of the unprofessional conduct, the *circumstances in which the crime was in fact committed cannot be considered. Moral turpitude must be inherent in the crime itself to warrant cancellation or suspension of a license because of the conviction.* In re Hallinan, 43 Cal.2d 243, 248-249,

> 272 P.2d 768, *Moral turpitude is not inherent in the crime itself unless a conviction in every case would evidence bad moral character. Only if the minimum elements for a conviction necessarily involve moral turpitude and a conviction cannot be had without proof of facts showing moral turpitude, can the conviction be held to be of an offense involving moral turpitude.*" (Emphasis added)
>
> "*We have concluded that the offense* of giving an alcoholic beverage to a person under the age of 21 years *does not in every case evidence a bad moral character and that moral turpitude is therefore not inherent in the crime itself. Conviction alone, therefore, of such an offense does not warrant the suspension or cancellation of a license* under section 2383." (Emphasis added)

Inasmuch as under both *Jones* and *Lorenz*, the court cannot consider surrounding circumstances, the only reasonable and logical analysis would, as *Lorenz*, *REQUIRE THAT THE ELEMENT OF MORAL TURPITUDE BE INHERENT IN AND AN ELEMENT NECESSARY FOR A CONVICTION OF THE CRIME OF ASSAULT AND BATTERY IN EVERY CASE.* Otherwise there would be nothing for the court to consider in evaluating Respondent's moral fitness to continue to practice law, which is the sole purpose of such a proceeding.

Similar in context to the reasoning in Lorenz, a grammatical analysis of the phrase "involving moral turpitude", leads to the same conclusion. Webster defines "involving, involved, involve" as, "... to have within or as part of itself ... and to require as a necessary accompaniment", ... being synonymous with "include" which Webster defines as, "to take in or comprise as a part of a larger aggregate or principle", stating that the shared meaning element is, "... to contain within as part of a whole". Therefore, inasmuch as the Rules require that the conviction be of a "felony involving moral turpitude", MORAL TURPITUDE MUST BE INVOLVED as a part of the crime itself, without regard to the particular circumstances. It seems reasonable to assume that the Rules of the Bar Association were written by men and women who understand and comprehend the usual and customary meaning and connotation of words commonly used in our language and surely that was their intent.

So what is "moral turpitude", and is it an inherent and essential element of the crime of Assault and Battery? Frankly, no one seems to know exactly WHAT is moral turpitude. The courts have been unable to define just WHAT constitutes moral turpitude. They will say, "... well, it is involved in this case, but not in that case, but we can't really say just what it is". A legal dilemma to say the least. The text writer in 43 Harvard Law Review 117, says that, essentially, it relates to good morals, truthfulness, honesty, and moral character, and notes at p. 118:

> At common law, this term was rarely used to distinguish between more, or less heinous crimes. The classification in vogue included felony and misdemeanor crimes *mala in se and mala prohibita, crimen falsi;* (10) and infamous crimes.
>
> (10) *This term* was imported *from* the *civil law* where it covered such crimes as *forgery*, *perjury* and dealing with *false* weights or coins. Dig.48.10.22. At common law it included any offense which might injuriously affect the administration of justice by *FALSEHOOD* AND *FRAUD*. (Emphasis added)
>
> Almost *all courts* have *construed* the words *as embracing* every form of *stealing, larceny, embezzlement, burglary,* receiving *stolen property*, obtaining money under *false pretenses*, conspiring to defraud, and *issuing a check without funds* are all crimes involving moral turpitude.
>
> There is *also unanimity* in condemning various forms of *false swearing;* it involves moral turpitude not only to commit *perjury*, but also to file consciously *false information*

> with the income tax department, the pension office, the comptroller of the currency, officials in charge of military exemptions, and trustees in bankruptcy. This line of decisions simply duplicates the list of wrongs denominated crimen falsi at common law.

The writer lists crimes found to involve moral turpitude, but does not offer a definition. The essence of his comments is that historically, it involves lying, cheating, and stealing; but no mention of Assault and Battery.

Another text writer, *Broadway*, in 24 Calif. Law Review 9, 10, comments as follows:

> *There are certain acts, in general, accepted as not involving moral turpitude. Among these are simple assault and battery* and violation of minor police regulations. (Emphasis added)
>
> In the Rudolph case, (Rudolph v. U.S., Ct. of App. D.C., 1925, 6 F.2d 487), where a retired policeman was convicted of the 'unlawful possession and transportation of intoxicating liquors' the court held that the offense did not involve moral turpitude. *'There is no hard and fast rule as to what constitutes moral turpitude.* It cannot be measured by the nature or character of the offense, unless, of course, it be an offense, inherently criminal, the very commission of which implies a base and depraved nature. The circumstances attendant upon the commission of the offense usually furnish the best guide. *For example, an assault and battery may involve moral turpitude on the part of the assailant in one case and not in another.* (Emphasis added)
>
> Moral turpitude is a test similar in meaning to that dividing acts *mala in se* from those *mala prohibita*. The authorities do not bear out this distinction. Nor is the distinction itself precise enough to help in the solution of disbarment problems.

> Unless, as a matter of law, every criminal act involves 'moral turpitude', every judicial application of the phrase to the facts of a specific case involves the exercise of some judicial discretion. If that discretion could be exercised with the aid of an accepted and precise distinction, if 'moral turpitude' were synonymous with felonies or acts *mala in se*, and if the distinctions represented by those phrases were applicable to modern disbarment proceedings, it would be possible to decide in favor of a strict construction of the legislative language. But these conditions are not met and *one is driven to the conclusion that the former term does not have a fixed meaning.*
>
> Granting the need for flexibility, and a consideration of all the circumstances of the case, the procedure is subject to the criticism that *a judge may unconsciously mistake his own bias for an intuitive perception of the common conscience. A judge applying the test of 'moral turpitude' is not merely expounding a principle of law. He is setting a moral standard, legislating perhaps, interpreting the public mind. Unless the legislature has supplied a precise definition, the judge of necessity makes an exploratory excursion into the field of morals. This is not primarily a judicial function and the results all too often are in conflict.* (Emphasis added)

However, we are not here concerned with esoteric or scholarly dissertations of the possible meanings of moral turpitude, or the possible applications of that term. This summary-type proceeding is authorized by the Rules for the sole purpose of determining an attorney's moral fitness to continue to practice law; a right Respondent earned through twenty years of education and which he honorably pursued from 1957 to the date of his suspension in 1971. This is not the proper forum to punish Respondent for some displeasurable act he may have committed. 'Punishment' is the sole province of the criminal courts under the penal statutes, which in this instance, fortuitously, only elicited the maximum penalty allowed by law. The obvious import of the Bar Rule is that if an attorney manages to get himself convicted of a felony in which moral turpitude is clearly and without question an essential, inherent element of every such crime and without proof of facts thereof, a prima facia case could not be established or a conviction had, (such as lying, cheating or stealing) then we have this "short-form of justice" and can get on with the hanging without all the niceties of a hearing, evidence, testimony, questions, findings, and such. The mere conviction itself – *in every instance* – without regard to the facts and circumstances surrounding the case, is sufficient to brand him unfit to practice law. The issue of his 'moral' fitness has already been thereby conclusively adjudicated. Rightly or wrongly, that's what the Rule contemplates. But that is the *only* permissible circumstance that authorizes and empowers the court to summarily discipline an attorney. Isn't it reasonable to assume, however, that such a rule demands the presence and proof of moral turpitude exist, *beyond any doubt*, in the conviction of a given crime in every instance before that process can be invoked and the crime be said to be one 'involving moral turpitude'? It seems such an elemental construction.

An exhaustive review of the annals of the English Common Law, the history of American jurisprudence, Treatises, Text writers and the Restatement of the Law, completely fails to support the premise that 'moral turpitude' is an inherent and essential element of Assault and Battery. There isn't a single reported case in the State of Oklahoma where it was held that moral turpitude is an essential, inherent element of Assault and Battery, without proof of which a conviction cannot be had. Not one! That's not even a close question. Perhaps no other wrong, whether as a civil or a criminal matter, has been as comprehensively litigated as Assault and Battery. In Law School it is the first tort we study and the first crime we study. As

Lawyers, our ability to comprehend and apply the elements of Assault and Battery is as fundamental as our understanding of the concept of law itself. The crime of Assault and Battery with a Dangerous Weapon consists of the SAME, EXACT, ELEMENTS as the crime of Assault and Battery, or simply "battery, a misdemeanor, with the added element of a weapon deemed to be dangerous, either per se or by its use in a particular instance. 'Battery' consists of two elements; namely (1) is the unlawful application of force to the person of another, (2) which results in either bodily injury or an offensive touching. Intent to harm a particular person is not required as intent may be transferred. Actually, there may be no 'intent' whatsoever, as one may have caused the application of force merely through criminal negligence. So where, as we have seen, moral turpitude, or simply, turpitude, is the consequence of SOME mental fixation of thought, such as is required in lying, cheating or stealing, and a Battery COULD be committed without ANY mental fixation of thought, how could one intelligently assert that every crime of Battery MUST involve a fixation of thought, as in moral turpitude, when, as a matter of law it simply does not! Respondent does not in the least suggest a lack of seriousness of *any* felonious offense, but in the context of legal analysis, Assault and Battery is *EXACTLY* the same wrong as Assault and Battery with a Dangerous Weapon, with the obvious singular added element. It becomes a felony, only because of the additional punishment permitted by statute, not by the inclusion of any additional element of the crime itself. It is still Assault and Battery.

Yes, one COULD argue that the "acts" which one may have committed in an Assault and Battery were those which "society", in retrospect, would regard as involving moral turpitude, but that is not the issue here. Whatever "acts" Respondent may have committed in this instance are not before this court. Not so by reason of any action either on the part of the court or Respondent. It was the choice of the Complainant as to which procedure, if any, to invoke in attempting to discipline Respondent. The Respondent was given no voice in the matter. The Rules which govern, empower, and limit the Complainant herein, CLEARLY REQUIRE the existence of this fundamental and necessary condition precedent in order to invoke the jurisdiction (power) of this court, and that condition precedent, as a matter of law, simply was not met. It unquestionably follows, that if the condition precedent was not met this court was powerless in this proceeding to have disciplined Respondent. The "key" to unleashing the power of this court on Respondent did not fit the "lock". The Bar simply chose the wrong "key". It is rather like the argument used by A. Lincoln as a trial lawyer, who, in challenging the veracity of a witness, admonished the jury that one "saying" a calf has five legs does not establish that the calf actually has five legs; the calf either has five legs or it doesn't. The crime of Assault and Battery either "involves moral turpitude" as an inherent and essential element, or it doesn't. The Bar's bare allegation that it does is nothing more than that which it is, ie., a mere allegation, and as such established nothing and should be accorded the respect which it so richly deserves; none whatsoever! But to wrongly assert that an attorney, who otherwise has an excellent reputation as a community leader and the highest respect of his fellow attorneys and the Judges before whom he practiced, has been convicted of a crime involving moral turpitude, when in fact and in law, THE CRIME DOES NOT INVOLVE MORAL TURPITUDE, and to then seek the destruction of his professional life as well as the obvious consequent destruction of his personal life is not only libelous per se, it is unconscionable! In a society where every person is accountable under the maxim, "ignorance of the law is no excuse", without regard to the extent of their individual intellectual capacity or educational achievements, would it really be imposing an excessive standard that Complainant, as the single, existing, recognized composite of those certified in this State as being "learned in the law", know the elements of so basic a wrong as Assault and Battery, and to appreciate and understand the consequences of its stigmatization of Respondent as an attorney convicted of a crime involving moral turpitude? Who should better know than they?

Although "moral turpitude" continues to elude definition, several courts have considered the question whether assault and battery, or assault and battery with either a dangerous or deadly weapon, "involves moral turpitude". As this court will note, these authorities consistently conclude that IT DOES NOT. The leading case is the 1940 California case of *IN RE ROTHROCK*, 106 P.2d 907. Rothrock, an attorney, had been charged on three criminal counts. Two were attempted murder, while armed with a revolver, and one was assault with a deadly weapon, also a revolver. This disbarment proceeding was predicated solely upon his conviction of assault and battery with a deadly weapon, based on a plea of guilty. The California law under which his disbarment was initiated is essentially identical to the Oklahoma Bar Rules relied upon in Respondent's case.

Quoting from the opinion:

> Section 6101 of the Business and Professions code provides: Conviction of a felony or misdemeanor, involving moral turpitude, constitutes a cause for disbarment or suspension as provided in section 6102.
>
> Section 6102 provides:
>
> *Upon the receipt of the certified copy of the record of conviction of an attorney of a crime involving moral turpitude,* the court shall suspend the attorney until judgment in the case becomes final. When a judgment of conviction becomes final, the court shall order the attorney disbarred.

[1] It has been stated that the commission of an intentional and willful criminal act is indicative of an unfitness to be entrusted with the administration of the law, and that generally the conviction of a felony or other infamous crime is cause for disbarment. *It is also stated, however, that where the courts have the power to investigate into the nature of the act, the attorney's name will not be stricken from the rolls where the nature of the particular crime does not reflect a bad moral character with respect to the duties of the attorney's profession.* See notes 45 AM.St. Rep. pp. 76, 77 and cases cited; 5 Am.Jur. pp. 428-429, and cases cited. (Emphasis added)

[2] The legislature of this state by the adoption of the foregoing Code sections has recognized that a violation of the law, without more, does not necessarily brand the attorney committing the same as a person unfit to practice law. It has thus added the further requirement that in the commission of the crime moral turpitude must be involved. The legislature had made the record of conviction conclusive, but it has left the court the duty of deciding whether the particular crime involves moral turpitude. In cases such as those involving convictions of murder, forgery, extortion, bribery, perjury, robbery, embezzlement and other forms of theft, no difficulty would attend the determination of the question of moral turpitude from a consideration of the record of conviction alone.

[3-4] *The courts do not appear to have decided the question whether the conviction of an attorney on the charge of assault with a deadly weapon will require his disbarment on the ground that the offense involves moral turpitude. In Re Hatch, supra, this court stated that a conviction of simple assault and battery might indicate that moral turpitude was not involved. In the final analysis the purpose of any disbarment proceeding is not to punish the attorney — in the case of a criminal act he is amenable to punishment under the penal statutes – but is to afford*

protection to the public and to the profession by an investigation respecting the moral fitness of the attorney to continue in the practice of the law. In re Vaughan, 189 Cal. 491, 209 P. 353, 24 A.L.R. 858; Ex parte Wall, 107 U.S. 265, 288, 2 S.Ct. 569, 27 L.Ed. 552. *The author of the note cited supra* (45Am.St. Rep. At p. 77; see also 2 R.C.L., p.1100) *cites decisions recognizing that it is not every criminal act which will justify a disbarment and to the effect that acts merely discreditable, but not infamous and not connected with an attorney's duties, did not justify the striking his name from the rolls.*

Therefore, in convictions presenting doubtful cases on the question of moral turpitude, where the perpetrator of the offense is an attorney, the question whether the act involves moral turpitude properly may be resolved by a consideration of the nature of the offense as it bears upon his moral fitness to continue in the practice of the law. *A consideration alone of the nature of the offense, therefore, may disclose that conviction thereof would not result in loss of the respect and confidence of his fellowmen, if his name be continued on the roll of attorneys. If that be the result of the consideration of the record of conviction alone, the conclusion may well be determinative of the question of moral turpitude, and the offense of which the attorney was convicted will be held not to involve moral turpitude. If however, the nature of the offense, considered alone or in connection with the record of conviction and the statutes defining the particular offense, does not disclose that the commission thereof would or would not cast discredit upon the attorney's moral fitness to practice law, then an investigation into the circumstances will be permitted.* In re Hatch, supra, and In re Richardson, Cal.Sup. 102 P.2d 1076, were such cases.

The question whether under particular statutes the crime of assault with a deadly weapon involves moral turpitude does not appear to have been decided in this state, but has had some consideration in other jurisdictions.

In Ex parte George, D.C., 180 F. 785, 786 [deportation under the immigration laws] the alien was convicted "of a felonious assault and sentenced to four months imprisonment". The "assault consisted of his act in striking in a quarrel another Greek with a large piece of firewood. At the same time the brother of petitioner stabbed the same person with a knife." The court said: "it *[the assault] does not constitute a misdemeanor involving moral turpitude."*

In Ciambelli ex rel, Maranci v. Johnson, D.C., 12 F.2d 465, 466, also a deportation case, the question was whether a conviction of assault and battery upon a police officer involved moral turpitude. The court observed that the indictment charged that Maranci was armed with a dangerous weapon, a razor, but that it was not charged nor claimed 'that the assault was made with the weapon'. *The court said: "It has been held that simple assault and battery is not a crime involving moral turpitude [citing cases]. But an assault is one of those offenses which may, or may not, involve moral turpitude, depending upon the circumstances of the particular case. If one ordinarily law-abiding, in the heat of anger, strikes another, that act would not reveal such inherent baseness or depravity as to suggest the idea of moral turpitude. If, on the other hand, one deliberately assaulted an officer of the law with a dangerous weapon and with felonious intent, for the purpose of interfering with the officer in the performance of his duty, the attendant circumstances showing an inclination toward lawlessness, the act might well be considered as one involving moral turpitude. Between the two lies the line of demarcation which I do not undertake to define* *accurately. I only determine which side of the line the facts of this case fall." On the facts in that case the court concluded that the assault did not involve moral turpitude."*

[5-6] *In the absence of a statutory definition indicating that evil intent is inherent in the commission of the crime, the courts generally are reluctant to classify the crime of assault with a deadly weapon as one involving moral turpitude as a matter of law. Where the question has arisen in disbarment proceedings, such conduct has been deemed not to call for disbarment as a matter of course.* A high degree of moral standards is required of an attorney, but the courts have not been inclined to impute moral turpitude in the commission of the lesser infractions of the penal laws which carry no reflection upon the attorney's moral fitness to practice law. The commission of such lesser offenses by an attorney in the heat of anger or as the result of physical or mental infirmities does not, without more, cast discredit upon the prestige of the legal profession or interfere with the efficient administration of the law and should not be deemed to involve moral turpitude. Our statute, sec. 245, Pen.Code, does not define assault with a deadly weapon so as to indicate that it is an offense which by these tests involves moral turpitude as a matter of law. *That it did not involve moral turpitude in the particular case may be reflected by the record of conviction, which is all that is before the court in this proceeding.*

In the 1989 case of *In re Larkin*, 768 P.2d 604, California Supreme Court, lawyer Larkin had gone to considerable lengths to gather information about a man who was dating his separated wife. At Larkin's request and acting on the information Larkin had obtained, a co-defendant in Larkin's criminal case and an unidentified accomplice went to the boy friend's place of employment, instructed him to discontinue his relationship with Larkin's separated wife, struck the boy friend in the face with a metal flashlight and told him never to come again to the town of the wife's residence or they would return to see him and he would never walk again.

The State Bar proceeded against Larkin on the basis that *although the facts and circumstances surrounding his conviction did not involve "moral turpitude"*, they did involve the other misconduct warranting discipline. Quoting from the opinion:

> It [the Bar] points out that when Rothrock was decided in 1940, we applied a different law which stated that a *criminal conviction must involve moral turpitude before discipline could be imposed ...*
>
> As the State Bar pointed out, in 1940 we could not reach the question of degree of discipline since *we decided that the attorney had not demonstrated lack of moral turpitude.* Of course the state of the law today provides otherwise. (Emphasis added)

Hallinan vs. State Bar, 421 P.2d 76, a 1966 decision of the California Supreme Court, involved the Bar Examiners' refusal to certify applicant to the Supreme Court for admission to practice law. Hallinan had been involved in and convicted for several fist fights, before and during his tenure in law school, as well as incidents of unlawful assembly, disturbing the peace, trespass to obstruct lawful business and unlawful entry. The court in ordering the applicant's certification held:

> The test for admission to practice law and for discipline of attorney is the same.
>
> *Not every intentional violation of law is ipso facto grounds for excluding violators from legal profession.*
>
> *In cases of crimes that do not necessarily involve moral turpitude, investigation into surrounding circumstances must reveal some independent act beyond conviction to show that the act demonstrates moral unfitness and jus-*

> *tifies exclusion from admission to practice law or other disciplinary action.*
>
> *Although Petitioner's past behavior may not be praiseworthy it does not reflect upon his honesty and veracity nor does it show him unfit for the proper discharge of the duties of an attorney.*

The 1972 case of *In re Higbie*, 493 P.2d 97, was a disbarment proceeding wherein the lawyer had been convicted of failure to pay marijuana transfer tax. There the court held:

> In order to support a disbarment or suspension from the practice of law, the attorney must have committed a crime involving moral turpitude or an act involving moral turpitude, dishonesty, or corruption.
>
> *Question of whether attorney's conduct involved moral turpitude is one of law and Supreme Court is bound to resolve all doubts in favor of the accused.*
>
> *In evaluating conduct of attorney that may or may not involve moral turpitude, Supreme Court must recognize purpose for which it established the moral turpitude standard which is to ensure that the public, courts, and profession are protected against unsuitable legal practitioners, and the objective is not to impose punishment upon members of the profession.*
>
> *To hold that acts of attorney constitutes moral turpitude is to characterize him as unsuitable to practice law.*

And in *Morrison vs. State Board of Education*, 461 P.2d 375, a 1969 case to revoke a teacher's life diploma, the court observed:

> By interpreting these broad terms to apply to the employee's performance on the job, the decisions in Hallinan, Yakov, Swan, Owens, Orloff and Jarvella give content to language which otherwise would be too sweep-

ing to be meaningful. Terms such as "immoral or unprofessional conduct" or "moral turpitude" stretch over so wide a range that they embrace an unlimited area of conduct. In using them the Legislature surely did not mean to endow the employing agency with the power to dismiss any employee whose personal, private conduct incurred its disapproval. Hence the courts have consistently related the terms to the issue of whether, when applied to the performance of the employee on the job, the employee has disqualified himself.

In the instant case *the terms denote* immoral or unprofessional conduct or *moral turpitude of the teacher which indicates unfitness to teach.* Without such a reasonable interpretation the terms would be susceptible to so broad an application as possibly to subject to discipline virtually every teacher in the state.

That the meaning of 'immoral', 'unprofessional', and 'moral turpitude' must depend upon, and thus relate to, the occupation involved finds further confirmation in the fact that those terms are used in a wide variety of contexts. Along with public school teachers, all state college employees (Ed.Code,§24306, subd.(a)), all state civil service workers (Gov.Code, §19572, subd.(1)), and all barbers (Bus.& Prof.Code, §6582) can be disciplined for 'immoral conduct'. The prohibition against 'acts involving moral turpitude' applies to attorneys (Bus.& Prof.Code, §6106) and to technicians, bioanalysts and trainees employed in clinical laboratories (Bus. & Prof.Code §1320), as well as to teachers.

Surely the Legislature did not intend that identical standards of propriety should apply to more than half a million professional and government employees in widely varying fields without regard to their differing duties, responsibilities, and degree of contact with the public.

Courts and commentators have exposed and condemned

> the uncertainty of words such as 'unprofessional', 'immoral', and 'moral turpitude'.
>
> As we have explained above, the prohibitions against immoral and unprofessional conduct and conduct involving moral turpitude by a teacher constitutes a general ban on conduct which would indicate his unfitness to teach.
>
> *The right to practice one's profession is sufficiently precious to surround it with a panoply of legal protection.* (Yakov v. Board of Medical Examiners, supra, 68 Cal.2d 67, 75; 64 Cal.Rptr. 785, 791, 435 P.2d 553, 559), *and terms such as 'immoral', 'unprofessional', and 'moral turpitude' constitute only lingual abstractions until applied to a specific occupation and given content by reference to fitness for the performance of that vocation.*

The disciplinary proceeding, *In re Johnson*, 471 P.2d 269, Supreme Court of Arizona, 1970, involved an altercation between two attorneys where Johnson struck the other with a sometimes dangerous weapon, his brief case, and then proceeded to further pummel him about the head and body. In dismissing the Complaint the court held:

> Isolated trivial incidents of this kind not involving a fixed pattern of misbehavior find simple redress in the criminal and civil laws. *They have none of the elements of moral turpitude arising more out of the infirmities of human nature. They are not the appropriate subject matter of a solemn reprimand by this court.*

In the Texas disciplinary proceeding, *Muniz vs. State*, 575 SW.2d 208, the Court of Civil Appeals of Texas, 1978, held:

> *Question of whether a particular crime involves 'moral turpitude' within meaning of section of State Bar Act providing for disbarment upon proof of final conviction of any felony involving moral turpitude is to be determined by consideration of the nature of the offense as it bears on*

> *attorney's moral fitness to continue the practice of law.* (Emphasis added)

In the case of *In re Fahey*, 505 P.2d 1369, Sup.Ct.Calif., 1973, a disciplinary proceeding resulting from a conviction for failure to file federal income tax return, the court held:

> *The Supreme Court, in disciplinary proceeding, must resolve all reasonable doubts in favor of the respondent in deciding whether particular crime or act involves moral turpitude.*

A synopsis of the foregoing authorities establishes the following principles:

JONES : *CONDITION PRECEDENT TO SUMMARY-TYPE PROCEEDINGS IS THAT THE FELONY MUST BE ONE INVOLVING MORAL TURPITUDE. COURT MAY ONLY CONSIDER THAT WHICH APPEARS ON THE JUDGMENT AND SENTENCE IN DETERMINING EXISTENCE OF MORAL TURPITUDE.*

LORENZ : *MORAL TURPITUDE MUST BE INHERENT IN THE CRIME ITSELF. MINIMUM ELEMENTS FOR CONVICTION MUST INVOLVE MORAL TURPITUDE, WITHOUT PROOF OF FACTS THEREOF CONVICTION COULD NOT BE HAD BEFORE CONVICTION BE HELD TO BE ONE INVOLVING MORAL TURPITUDE.*

WEBSTER : *"INVOLVING" DEFINED AS, "PART OF ITSELF, TO REQUIRE AS A NECESSARY ACCOMPANIMENT; SAME AS "INCLUDE", DEFINED AS*

"COMPRISE AS PART OF A LARGER AGGREGAGE."

HARVARD L.R. : *MORAL TURPITUDE ESSENTIALLY MEANS LYING, CHEATING AND STEALING.*

CALIF. L.R. : *ASSAULT AND BATTERY DOES NOT INVOLVE MORAL TURPITUDE. THERE IS NO HARD AND FAST RULE AS TO WHAT CONSTITUTES MORAL TURPITUDE — IT DOES NOT HAVE A FIXED MEANING.*

ROTHROCK : *ASSAULT WITH DEADLY WEAPON DOES NOT INVOLVE MORAL TURPITUDE AND CONVICTION FOR SUCH DOES NOT JUSTIFY DISBARMENT. PURPOSE OF PROCEEDING IS NOT TO PUNISH ATTORNEY.*

GEORGE : *ASSAULT AND BATTERY DOES NOT INVOLVE MORAL TURPITUDE*

MARANCI : *ASSAULT AND BATTERY DOES NOT INVOLVE MORAL TURPITUDE; BUT IT MAY IN A GIVEN CASE DEPENDING ON THE FACTS.*

LARKIN : *ASSAULT AND BATTERY DID NOT INVOLVE MORAL TURPITUDE.*

HALLINAN : *NOT EVERY INTENTIONAL VIOLATION OF LAW IS IPSO FACTO GROUND FOR EXCLUDING VIOLATOR FROM LEGAL PROFESSION.*

HIGBIE : *QUESTION OF WHETHER ATTORNEY'S CONDUCT INVOLVED*

MORAL TURPITUDE IS ONE OF LAW AND COURT IS BOUND TO RESOLVE ALL DOUBTS IN FAVOR OF ACCUSED; OBJECTIVE IS NOT TO IMPOSE PUNISHMENT ON MEMBERS OF THE BAR.

MORRISON : *RIGHT TO PRACTICE ONE'S PROFESSION SUFFICIENTLY PRECIOUS TO SURROUND IT WITH PANOPLY OF LEGAL PROTECTION, AND MORAL TURPITUDE IS ONLY LINGUAL ABSTRACTION UNTIL GIVEN CONTENT BY REFERENCE TO FITNESS FOR THE PERFORMANCE OF THAT PROFESSION.*

JOHNSON : *ASSAULT AND BATTERY DID NOT INVOLVE MORAL TURPITUDE.*

MUNIZ : *QUESTION OF MORAL TURPITUDE MUST RELATE TO ATTORNEY'S MORAL FITNESS TO CONTINUE TO PRACTICE LAW.*

FAHEY : *THE SUPREME COURT, IN DISCIPLINARY PROCEEDINGS, MUST RESOLVE ALL REASONABLE DOUBTS IN FAVOR OF THE RESPONDENT IN DECIDING WHETHER PARTICULAR CRIME OR ACT INVOLVES MORAL TURPITUDE.*

Additional, Respondent contends that the mere use of a standard of conduct as nebulous as the term "moral turpitude" in a "shotgun style" proceeding as the sole test to determine one's moral fitness to continue to practice his profession not only exceeds the limits of credulity of every reasonable man's perception of just plain "fairness", but is clearly violative of one's right to "due process of law" and "equal protection under the law" guaranteed by the United States Constitution, because it is a term whose meaning and comprehension is indefinable, uncertain, perplexing, unfair, subjective and vague, and has varied as often as there have been judges to contemplate it and fails in every respect to establish a fair and ascertainable standard by which one's actions can be evaluated in proceedings such as this. To be applicable, a Standard must be known and defined BEFORE the occurrence of the actions to which it is to be applied. Otherwise it isn't a Standard at all. Unlike the "chicken and egg" quandary, we must FIRST invent the Ruler, before we can use it to measure something! Clearly the Bar Rule applicable here is unconstitutionally vague.

Where, as under the authority of *Rothrock, Lorenz, Hallinan, Higbie, Morrison, Muniz* and *Fahey,* one's right to practice his profession is a valuable right as to which THIS COURT MUST RESOLVE *ALL REASONABLE DOUBTS* IN FAVOR OF RESPONDENT in deciding (A) whether the subject crime involves moral turpitude and (B) whether such presumed moral turpitude relates to Respondent's moral fitness to continue to practice law, can it not be fairly said that, AT THE VERY LEAST, there is a "reasonable doubt" that the subject crime involves moral turpitude? Under the procedure here chosen by the Bar Association, where the surrounding circumstances are kept from the Court's consideration, can it not be fairly said, at the very least, there is a "reasonable doubt" that WHATEVER RESPONDENT DID MIGHT NOT NECESSARILY REFLECT on his moral fitness to continue to practice law?

To illustrate this Court's inconsistent and unequal handling of disciplinary matters involving moral turpitude, the Court is referred to *Oklahoma Bar Association v. Gresham* (1976), 566 P.2d 264. This case involved an attorney who committed a crime generally regarded as a classic example of a crime involving moral turpitude. One which, as stated by the Harvard Law Review text writer, supra, "* * * might injuriously affect the administration of justice by FALSEHOOD AND FRAUD" (Emphasis added.), to wit, lying, under oath, to a Federal Grand Jury. the attorney admitted he had lied to the Grand Jury and that the offense of which he was convicted, Perjury, "involves moral turpitude". And yet, notwithstanding his admissions, this Court permitted him to introduce Affidavits from friends to the effect that in spite of his conviction for lying to the Grand Jury, the affiants felt he was honest and trustworthy and that the conviction was sufficient punishment. A clear case of a conviction involving moral turpitude but he was only Suspended for four years! Admittedly, this Court is not compelled to Disbar an Attorney in every instance, but when the crime involved and results in the *Gresham* case, the disparity and inequality of this Court's resolution of both cases inexplicable!

Nonetheless, it being abundantly clear from the record before this Court in the instant case, that Respondent was not convicted of a felony "involving moral turpitude", this Court did not have jurisdiction to render the Order of Suspension or the Judgment of Disbarment, because, "the power to render the Decree or Judgment which the Court may undertake to make in the particular cause, depends upon the nature and extent of the authority vested in it by law in regard to the subject matter of the cause", *Cooper,* supra, and the *nature* of the law require that Respondent must be convicted of a felony involving moral turpitude, and the *extent* of this Court's authority to proceed herein with regard to the subject matter was limited by the ruling in *Jones* that the condition precedent must first be met BEFORE THIS COURT CAN PROCEED TO DISCIPLINE RESPONDENT. The Suspension and Disbarment are void ad initio and must be vacated.

Alternatively, the Court would surely not want the precedence of its Judgment herein to require the State to allege and prove the existence of "moral turpitude" in EVERY case of Assault and Battery or Assault and Battery with a Dangerous Weapon. First of all, it would require the reversal of Respondent's conviction because the State did not allege nor prove "moral turpitude". With the conviction reversed, this Court would nonetheless be required to vacate its Judgment herein because there would be no criminal conviction to support the summary-type proceeding. And, likewise, the reversal of countless other convictions for said crimes where the State did not allege nor prove "moral turpitude". The sword of "Justice" does indeed have two edges!

CONCLUSION

WHERE, as here, a Court does not have the power to render the particular Judgment it purports to render, that Judgment is void and may be attacked at any time. The Order of Suspension and the Judgment of Disbarment entered herein should both be vacated, set aside and held for naught, with any record thereof completely expunged, and Respondent allowed to reinscribe his name on the Roll of Attorneys of this Court, Respondent should further be ordered reinstated as a member in good standing of the Oklahoma Bar Association as of the date of his Suspension, with all member dues or assessments that Respondent would have been required to pay during this twenty-year period of having been wrongfully deprived of the right to practice his profession ordered waived, and all reasonable costs incurred by Respondent in removing such wrongful Suspension and Disbarment be assessed against the Complainant.

Respondent concedes he made a serious and grevious mistake, for which he has paid dearly, and rightfully so. Nonetheless, the people of Oklahoma, acting through their duly elected Governor, granted Respondent a full pardon for such conviction in 1975. The question is not whether Respondent should have been disciplined by another procedure; nor whether Respondent should have been disciplined by any proceeding. The only question is whether this Court had the jurisdiction to suspend or disbar Respondent in this case, under the procedure chosen by the Bar Association. The mere passage of time could never justify the wrongfulness of this proceeding.

A serious mistake has been made by this Court; the Judgment can no longer be allowed to remain. The time has come to "right" this "wrong". It should be as repugnant to the conscience of the Court as it is to the Honorable Profession of the practice of Law, and to Justice.

Respectfully submitted,

/s/ John Robert Seelye
JOHN ROBERT SEELYE, pro se

/s/ Fred Head
FRED HEAD
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EXHIBIT "A"

IN THE SUPREME COURT OF THE
STATE OF OKLAHOMA

STATE OF OKLAHOMA, ex rel)
OKLAHOMA BAR ASSOCIATION,)
Complainant)
VS.) S.C.B.D. No. 2266
JOHN ROBERT SEELYE,)
Respondent

AFFIDAVIT

Before me, the undersigned authority, on this day personally appeared John Robert Seelye, who, after being by me duly sworn, deposed and said:

"My name is John Robert Seelye, presently a resident of the City of Dallas, Dallas County, Texas, and the Respondent in S.C.B.D.No. 2266 now pending in The Supreme Court of the State of Oklahoma.

Although the name of Irvine E. Ungerman appears on the record as counsel for Respondent in the original proceedings before Complainant and in this Court, Respondent was never represented by Mr. Ungerman, herein, nor was Mr. Ungerman employed or authorized to do so. Mr. Ungerman's only authorized act was to send a letter to Complainant requesting the continuance of an earlier hearing due to Respondent's illness and inability to attend, enclosing a statement to that effect from Respondent's physician. The request wa summarily denied. Mr. Ungerman never appeared on behalf of Respondent at any hearing on the merits of this matter, nor did he file any pleadings, documents, or briefs on behalf of Respondent herein, nor did he offer any witnesses or other evidence on Respondent's behalf, nor did he make any oral argument on behalf of Respondent either before Complainant or the Court. Respondent was neither present nor represented by any counsel at any time during either the Complainant's or the Court's consideration of this matter. All such proceedings were conducted ex parte with Complainant as the only appearing party."

Respectfully submitted,

/s/ John Robert Seelye

Sworn to and subscribed before me by John Robert Seelye on this 29th day of July,1991.

/s/ Caroly Smith
Notary Public in and for Texas

my commission expires 3/3/93

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Brief and Exhibit "A" attached thereto was hand delivered to the General Counsel of the Oklahoma Bar Association, 1901 N. Lincoln, Box 53036, Oklahoma City, Oklahoma, 73152, on this 29th day of July, 1991.

/s/ Fred Head
FRED HEAD

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

In the Matter of the)
Reinstatement of)
)
JOHN ROBERT SEELYE) *SCBD No. 4618*
)
To Membership in the Oklahoma)
Bar Association and in)
The Roll of Attorneys)

PETITIONER'S BRIEF IN CHIEF

1. This matter comes before this court on Petitioner's Petition for Reinstatement to the Oklahoma Bar Association and to inscribe his name on the Roll of Attorneys for the State of Oklahoma. A Hearing was conducted before a Trial Panel consisting of two lawyers selected by the Oklahoma Bar Association and their Report of Findings is now on file for a *de novo* review by this Court. The third member of the Panel selected by the Bar Association was unable to attend and the matter proceeded in her absence.

SUMMARY OF THE RECORD

2. Under *Okla.Sup.Ct.R. 1.11(e)(2), Original Jurisdiction Proceedings,* the brief in support of the Petition shall contain a Statement of the Record, setting forth the material facts. If a response is ordered and the answering party shall contend that such Summary of the Record in incorrect or incomplete, that party's response shall contain a Summary of the Record correcting any such inaccuracies.

3. The Petitioner, born in the City of Tulsa on January 8, 1932,

and will be 70 years of age by the time the Court reads this brief, hopefully, graduated from the University of Tulsa College of Fine Arts with a *B.M.E.* Degree in 1953. He then enrolled in the University of Tulsa College of Law in 1953, then a four-year evening program, and graduated in 1957, 2nd in his Senior Class, with *L.L.B* and *J.D.* Degrees. Petitioner successfully passed the Oklahoma Bar Exam in 1957, ranking 5th, and was admitted to the Oklahoma Bar Association and inscribed his name on the Roll of Attorneys in July, 1957.

4. Petitioner then entered the private practice of law in Tulsa as an associate of the firm of Shidler & Threadgill, later became an associate of LeRoy Blackstock and in 1962 became a solo practitioner and a part-time Asst. City Attorney for the City of Tulsa. He continued as an Asst. City Attorney until 1968, when he resigned to engage only in solo practice. In 1963, he was appointed the first General Counsel of the City of Tulsa-Rogers County Port Authority, a position he also held until he resigned in 1968.

5. While in practice, Petitioner was active in the Tulsa Jaycees for several years, having served on its Board of Directors for five years, Vice-President for two years, and President in 1963-64. He was also selected as the Oklahoma *S.P.O.K.E.* recipient for his first year of service, an award given to the most outstanding new Jaycee, was elected President of the National *S.P.O.K.E.* Assoc., served as Legal Counsel for the Oklahoma Jaycees for one year, and represented the U.S. Jaycees at the International Convention of Jaycees International in Chihauhau, Mexico. He also served on the Board of Directors of the Downtown Tulsa Y.M.C.A. and the Tulsa State Fair Board of Directors. Petitioner was also active in numerous political campaigns and Bond elections, both local and state-wide.

6. Petitioner was first married in 1956, from which he had four children, and was then divorced. He re-married, had no

additional children and was divorced a second time. In 1969, he met and fell in love with a young lady, *Suzanne*. They became engaged to be married, signed an anti-nuptial agreement (OBA Ex. No.3), and at *Suzanne's* request Petitioner had a vasectomy in October, 1969. (OBA Ex. No.2) Petitioner and *Suzanne* later decided to date others for a time although they saw each other or spoke to each other on a daily basis. The original offense that resulted in the disciplinary proceeding against Petitioner was the result of a lover's triangle involving the Petitioner, *Suzanne*, and *Albert*.

7. *Suzanne* asked Petitioner to come to her home in the evenings to make sure everything around the premises was alright. *Suzanne* had a large back yard with many tall trees. Petitioner routinely went to *Suzanne's* home in the evenings to basically check it out. One such evening he observed *Suzanne* and *Albert*, both naked, having sex on a sofa in the den. There was a large plate glass window with open drapes for easy view.(OBA Ex. No. 1-A) Petitioner and *Suzanne* continued their relationship until September, 1970.

8. The incident involved occurred in September, 1970. Petitioner stated in his Personal Information Forms and testified at the Hearing he was fully conscious of the wrongfulness of his acts which he admitted, and took full responsibility for his wrongful acts. The Petitioner further testified he did not blame anyone else for his actions and apologized to everyone affected. Without question his acts in 1970 brought disrepute on the profession and Petitioner freely recognized that factor. Tr., 114, line 1; (witness Petitioner)

Q Bob, there has been some testimony here — and you know why we're here, because you were romantically involved with a young lady, which led, eventually, to your disciplinary action. Do you feel comfortable in telling the panel about this relationship and what happened, the incident?

A I'm comfortable to tell the panel anything they would like to hear. I don't know how much they want to hear. The criminal case has been tried. The conviction has been had. This matter was revisited in a prior reinstatement. But basically, this young lady and I began to date. We became romantically involved. We spent quite a bit of time together. We traveled a lot together. She came from an extremely wealthy family in Tulsa, extremely wealthy. We became engaged. We planned to be married. We signed a prenuptial agreement. I didn't have anything, but — she didn't have anything, either, but her parents did. But nonetheless, we planned to get married and we were engaged. After a period of time — at that point, she had three children and I had four. We really didn't think we needed more children. Although I do have a young son, Sean, at this time. So she asked me to get a vasectomy, which I did, which, apparently, it didn't take, or it was a miracle that Sean is here. But nonetheless, it occurred. At some point, we decided, 'Well, we need to make sure that we're doing the right thing. So let's back off for a little bit, date around a little bit.' I still saw her almost daily; talked to her, certainly, daily; came by her home — she asked me to come by and check things, because she had a large house and very large grounds, with a lot of trees, and she was concerned about her safety and that of her three children.

An incident occurred which caused me to realize that there was another gentleman who was entering the relationship or coming between the relationship, and for whatever reason — and I want to say to the panel, at this point, that anything I say, anything I may be asked, I'm not blaming anyone at all for anything that happened. I'm not suggesting any excuse or justification for anything that happened. It certainly wasn't right. I wanted to apologize to the gentleman involved and Suzanne and her family. I haven't had the opportunity. I was advised early on not to do that. But if they were here, I would apologize to them at this point and tell them I regret it very much. I'm very sorry that it happened. It was my fault. I take full responsibility and apologize for that. Basically — again, this was 31 years ago. No, I don't remember everything. It wasn't like it was yesterday.

Q Right. Tell us the details, because you're going to be asked right over here.

A That's fine. Basically, I asked two gentlemen to try to cause this gentleman to relax his involvement with Suzanne, this young lady. I didn't — it wasn't my purpose to hurt him. I didn't want him to be hurt. I realize that, looking at these things objectively, you may say, 'Well, that was stupid. That was idiotic. That doesn't make any sense.' It doesn't.

I'm just saying that we were very romantically involved, we were heavily involved. We were planning to be married. I loved this young lady, and I didn't want to lose this woman. For whatever reason, that's what occurred.

They went to her house late one evening, I believe in September of 1970. According to testimony at the trial, they found a child's baseball bat in the backyard, which is what they, apparently, used in the assault. I was not at the site of the actual incident.

There was also testimony that the victim, Mr. Shirkey,

> felt — or said he was — testified that he was splashed with some kind of liquid. I don't know what the liquid was. I don't recall that there was any testimony at the trial what the liquid was. My recollection is that the police said they found an empty drainage cleaner container at — around the site, which may or may not have been used in the assault. I don't know that. I know that the site where the assault occurred, which was in her driveway, immediately in front of the garage, was the place where she commonly put her trash for pickup. I'm not saying that it, therefore, came from her house. I'm merely saying that I don't know that. I was not there. I did not see the container of liquid drain or any such things, so I have no idea where it came from. That's, basically, what I know about what happened.

9. There was no testimony at the Trial concerning the nature or chemical characteristics of the contents of this container which remain unknown. Although Petitioner was not present for the actual incident, it was he who set things in motion that resulted in the assault on *Albert*. He did not previously have the opportunity to apologize to *Albert* or *Suzanne* because he didn't know their whereabouts and had been advised by his Mother and his Lawyer, Louis Levy, not to attempt to make contact with them as his actions may be misunderstood and it was better for him to simply put it all behind and go on with his life. Tr., p. 174, line 12.

10. On advice of counsel, Petitioner did not testify at the Trial. He was convicted and sentenced to the maximum of five years. He served nearly two years in prison, was paroled in 1973 without any objection, and received a Full Pardon from the Governor in 1975, without any objection. There was no request, claim, or civil action filed for damages or restitution by *Albert*.

11. The Bar Association initiated Summary Disciplinary Proceedings against the Petitioner based solely on the conviction which resulted in his being disbarred in 1971. Petitioner filed a Petition for reinstatement in 1977, which was eventually denied by the Court in 1981. In 1991, Petitioner filed a Motion to Vacate the 1971 Suspension and Disbarment on the grounds that the crime of assault and batters does not involve "moral turpitude" as an inherent and essential element in every such conviction and the Court did not have jurisdiction to discipline Petitioner in a Summary type proceeding. That Motion was summarily denied without a Response from the Bar and without comment by the Court.

12. Following his release from prison, Petitioner moved to Oklahoma City where he began to work for Attorney Ferrill Rogers and later other lawyers and Oil & Gas Lease Brokers in OK, TX, AR, and KS, examining original land title records. In 1980, he and his wife moved to Golden, CO where he was employed by Dome Pet. Corp. as a Legal Assistant. After Dome became insolvent, he returned to AR for continued land title work and in 1983 began a career as a Fashion Photographer. In 1984 he moved to Dallas to continue his work in Fashion Photography which led him to Paris and Milano on many occasions. Finally, after a failed trip to Milano, he and his young son, of whom he had custody since 1987, remained in Tulsa where he began to work in the law offices of George Underwood, a law school classmate, as a Legal Assistant.

13. Tr., 127, line 2 (witness, Petitioner):

Q Bob, without going into too much detail and make it as brief as you can, tell us about your involvement as a professional photographer.

A Yes. You keep using the term 'brief.' In 1983, after having been rejected by the Bar in 1981, I returned from Colorado to Arkansas, because I last lived in Vail, Colorado, which is very expensive and they don't allow poor people to live there. So I went back to Arkansas to return to oil and gas title work. I decided, since I couldn't go back to law as of that time, I had to change professions. In 1983, moving from Fort Smith to Tulsa, with my wife and my young son, Sean, I had decided to become a professional photographer. I had no training in photography. I had bought some books and had a pretty nice camera and figured I would figure out what to do. I knew I wanted to specialize in fashion. I didn't want to have just an ordinary portrait/studio-type operation. Not that there's anything wrong with that, but that's not what I wanted to do. Well, I soon learned that there wasn't any fashion in Oklahoma. So it was obvious I needed to move to someplace, such as Dallas, which we did the following year, in 1964.

14. Tr., 33, line 17; (witness *Mirkin*)

Q You mentioned those foreign countries. Did he become a worldwide photographer?

A He's one of the best. He shoots for Vogue, Elle, Bizarre, all of the major magazines. He shoots the super models, and I could list off a bunch of them, but you probably wouldn't recognize them, to include Naomi Campbell, Linda Evangelista, Tish Goff, Stephanie Seymour. All of those models, I was present when he shot.

15. In 1975, Petitioner began to race (road) bicycles which he pursued for approximately ten years and raced in fifteen states. During this period he also trained with the U.S. Olympic Cycling Team in Colorado Springs and in Austin. Petitioner

was successful in winning several state championships in OK, TX, and CO and competed in three national championships. Tr., p.124.

16. In 1996, he married his present wife and moved to Muskogee. In 1999 he began to work in the law offices of David Garrett as supervisor of the personal injury department and in 2000 as a legal assistant for what is now Bonds Matthews Law Firm, the oldest and largest law firm in Muskogee.

17. Five professional persons were witnesses for the Petitioner, Mr. George W. Underwood, a practicing Attorney in Tulsa and Jay, Ms. Sarah Mirkin, Director of a Model Agency in Tulsa, Ms. Margo Bowles, a practicing Attorney in Tulsa, Ms. Pat Sneed, a licensed Insurance Adjuster in Oklahoma City, and Mr. Camp Bonds, Jr., a practicing Attorney in Muskogee and a partner in the Law Firm where Petitioner is employed. These witnesses, who have known the Petitioner from two to forth-eight years, all testified the Petitioner possessed very high moral character, was honest, and a person of integrity. If given the opportunity all would employ Petitioner as legal counsel or refer others to him, and all recommended that Petitioner be reinstated to practice law in Oklahoma. *Underwood*, Tr. p. 14, line 16 - 25, pgs. 15 - 21; *Mirkin*, pgs. 34 - 36; p. 39; *Bowles*, pgs. 49 - 53; *Sneed*, pgs. 59 - 67; *Bonds*, pgs. 87 - 95; and p. 96, line 20 to p.97, line 11.

18. Petitioner's present competence in legal skills is based in part on his background. Petitioner was an exceptional law student. He was 2nd in his Senior Class and ranked 5th on the Oklahoma Bar Exam in 1957.(Tr. p. 124, line 25; p.125, line 10) He worked for Sunray Oil Co. for 3 years in their Division Order Dept. and one year as a Bailiff in the State District Court. He also served two clerkships for practicing attorneys while in law school. In his 14 years of practice of law in the private as well as the public sector, he had the opportunity to handle sev-

eral matters of significance. He tried cases in Justice of the Peace Courts, Common Pleas Courts, County Courts, Superior Courts, State District Courts, the Oklahoma Supreme Court, United States District Courts of Oklahoma and Kansas, appeared in and argued several cases before the United States Court of Appeals for the 10th Circuit, and Petitioned for Certiorari to the United States Supreme Court. Since the offense, Petitioner has worked as a legal assistant, or doing essentially the work of a legal assistant, for approximately 20 of the past 31 years. Petitioner has worked full time as a legal assistant since 1993 and is currently the case manager for the most complex cases in the offices of his present employer, *Bonds Matthews Law Firm*. As such, Petitioner is researching the law on a daily basis in a variety of fields. See Tr. pgs. 99 - 146.

19. The Petitioner also introduced into evidence a compilation of selected documents prepared by Petitioner over a period of approximately the past six years which were the products of his legal knowledge and research. (Petitioner's Ex. 1) These documents reflect his perspicacity and acute knowledge of a broad spectrum of the law, both the law of Oklahoma and Federal law, and from the common law to *CERCLA*. These documents also represent the unique legal writing skills of Petitioner. Petitioner's Exhibit 1 is by no means a collection of all of his legal work in recent years, but merely a small selection.

20. In one pending case in Federal Court which involves nine claims for relief under Federal and State law, in which one of the members of the firm with whom the Trial Panel Master is associated represents one of the Defendants, Petitioner has performed all of the investigation, document production, all of the research, prepared all of the Pleadings and is responsible for timely responding to and evaluating all defense Pleadings, all correspondence, analysis of all scientific reports, accumulation

and evaluation of all evidence, shooting and editing all video photography, and preparing all briefs involving the Defendants, U.S.A., the Secretary of the Dept. of Commerce, the Dept. of Commerce, the Secretary of the Interior, the Dept. of the Interior, the Acting Administrator of the Bureau of Reclamation, the Administrator of the Environmental Protection Agency, the Environmental Protection Agency, a nationwide contractor that specializes in hazardous waste cleanup, a company that specializes in scientific engineering studies in the fields of the ecology and the environment, the State of Oklahoma, the Oklahoma Dept. of Environmental Quality, and the City of Henryetta. There are approximately twenty defense counsel from coast to coast. All such work, however, is performed under the direction and supervision of the senior partner of the firm. (*USDC ED OK; CIV-01-155 S*)

21. Other current complex cases involve personal injuries and the wrongful death in Arkansas of a young unmarried man from Oklahoma who fell 235 feet, whose employer violated 32 OSHA Regulations and ultimately was found to not have Workers' Compensation Insurance in effect at the time. (*DC Muskogee. CJ-2000-2210*) An action to recover a $100,000.00 payment due from an Annuity under a structured settlement entered into in 1984, in which the annuity issuer is in Bankruptcy in New York and the assignee of the liability carrier is in bankruptcy in California, whose attempted payment of that sum by another insurance company under an administrative agreement with the Superintendent of Insurance for the State of New York issued the check which was apparently forged by the client's mother but the drawer of the check did not verify that it bore the personal endorsement of the client as required by the Annuity contract. (*DC Cherokee; CJ-2001-18*) Plus the usual array of personal injury cases, black mold cases, denial of real property access, claims for improper strip mine reclamation, collection of a Judgment for a decree-ordered-lien in a divorce case, and many other matters.

22. The Affidavits of the Court Clerks of the various Counties in which Petitioner has resided since his disciplinary action in 1970 attesting to the fact that Petitioner did not practice law in any of their Courts during the time (s) of his residency have been admitted into evidence by the Bar Association. The Bar Association also heard the testimony of five witnesses, three of whom are practicing attorneys who have had close contact with the Petitioner for many years and all testified they knew of no situation when Petitioner engaged in the unauthorized practice of law. Tr. p.20, line 2; (witness *Underwood*), "Have you ever known of or been aware of Bob engaging in any unauthorized practice of law? " "None whatsoever." Tr. p. 37, line 9; (*Mirkin*); "Now, there's an area that we've been discussing this morning, and it will be discussed all day long. Have you ever observed him in the unauthorized practice of law? That means trying to give people legal advice or giving people legal advice or performing legal chores for them. Have you observed any of that? "Well, I've tried a lot. I'm just going to be real honest. I've tried to – he knows the answer. He's the smartest person I know. He could give it to me, but he won't. He'll tell me to go to Jim Gotwals, who is my counsel. So I have to pay a big fee." "So he's never given you legal answers to questions?" "No. No." Tr. p. 48, line 5; (witness *Bowles*) "Did you ever see Bob engaged in any appropriate — inappropriate behavior towards George's clients?" " None whatsoever."

23. The subject Petition for reinstatement was filed in 2001, originally as one for a Limited License which was amended by agreement of Counsel to be one for full reinstatement.

24. *Albert* testified by deposition after the conclusion of the Hearing. He was understandably bitter toward Petitioner, but, regrettable as that may be, it has no bearing on Petitioner's *present* fitness to practice law. See testimony beginning on Depo., p. 20, line 15.

Q Okay. Have you seen him since?

A No, sir, I have not — yes I did. I'm sorry, I did. He was an usher down at Boston Avenue Methodist Church and I saw him several times down there in his capacity as an usher.

Q Have you had any personal contact with him?

A Never.

Depo., p.21, line 4;

Q Are you in any way familiar with his present day moral character?

A No, sir.

Depo., p. 25, line 24;

A I don't hate Mr. Seelye personally. I forgive Mr. Seelye .....

Proposition I.

Petitioner has met the high burden of proof required and should be Reinstated.

25. In *Matter of Reinstatement of Wright,* 907 P.2d 1060 (Okla.1995), the Court held as follows:

> This court has further looked at eight factors it has deemed relevant in reinstatement proceedings. They are 1) *present* moral fitness; 2) demonstrated consciousness of wrongful conduct and disrepute conduct has brought on the profession; 3) extent of rehabilitation; 4) seriousness of original conduct; 5) conduct subsequent to discipline; 6) time elapsed since original suspension; 7) character, maturity and experience at time of discipline; and 8) present competence in legal skills.

> The Oklahoma Bar Association, through the General Counsel, initially .... took the position that an attorney with a felony conviction should ***never*** be allowed reinstatement by this Court. However, ... the General Counsel has receded from this earlier position given our prior cases he cannot present argument against reinstatement and that he realizes that each decision on reinstatement must be made on a case-by-case basis. We believe the General Counsel was correct to recede ....(Emphasis added)
>
> In support of his initial position the General Counsel brought to our attention no rule which would prohibit reinstatement in all instances to one convicted of a felony. ***No rule was brought to our attention because there is no such rule.*** (Emphasis added)
>
> However, in *Matter of Reinstatement of Cook, supra,* we granted reinstatement to an applicant convicted of a felony who showed by clear and convincing evidence ***that he had been rehabilitated and was of high moral character.*** See also *Matter of Reinstatement of Crabtree,* 793 P.2d 296 (Okla.1990); *Matter of Reinstatement of Cantrell, supra.* These latter cases illustrate that our rules provide that those persons who comply with the high standards required for reinstatement should be and are sometimes permitted to resume the practice of law, ***notwithstanding conviction of a felony.*** (Emphasis added)

26. Petitioner submits that he has met all of the requirements set forth in *Wright* and that the relevant, admissible, evidence offered herein is commensurate with the standard of proof accepted in *Cook* to warrant a finding by this Court that the Petitioner has indeed met the high burden of proof required in reinstatement with clear and convincing evidence. A careful study of the applicable evidence should compel the Court to this conclusion.

27. The fundamental question in any reinstatement is the applicant's ***present*** qualifications to be entitled to return to his or her profession. The purpose is not to punish an applicant. If the reason for the original discipline involved a crime, it is the sole province of the criminal courts to extract the appropriate punishment. It is an Applicant's qualification as to their ***present*** character and their ***present*** knowledge of the law that is important. Obviously an applicant must have done something wrong or failed to have done something right that warranted the original disciplinary action. But the more important questions presented to the Court are the applicant's ***present*** qualification in these two areas.

28. *Rolla Jay Cook* was disbarred while a sitting Judge in Muskogee for the felony crimes of embezzlement and false account of officer. Basically the Judge pocketed fine money paid to him. In its decision, *State of Oklahoma ex rel. Oklahoma Bar Association v. Cook,* 661 P.2d 531(Okl.1983), the court quoted from *State ex rel. Okl. Bar Ass'n v. Scanland,* Okl., 475 P.2d 975,

> First the offense of respondent betrays a lack of moral stamina, and therefore a lack of moral character ..... second, the offense is of so great a character as to call for serious treatment, not only as a matter of discipline to the respondent, but for its restraining influence upon others." "Respondent, while holding the high office of judge and under the deceit of administering justice to others under the law, callously violated all of the provisions of DR 1-102(A)(3), (4), (5), and (6). Respondent received a five-year sentence.

29. Six years later ***In the Matter of the Reinstatement of Rolla*** *Jay* Cook, OK, 772 P.2d 918(Okl.1989), the Respondent was ***reinstated.*** The court held,

> Applicant's betrayal of the office of judge and his betrayal of the legal profession demanded disbarment. Yet, applicant has demonstrated that he now possesses the character and competence necessary for reinstatement to the practice of law.

30. *In the Matter of the Reinstatement of Kamins*, 752 P.2d 1125(Okl.1988). *Kamins*, was the recipient of six grievances primarily dealing with stealing client funds and fraud. *Kamins* testified his problems were primarily caused by alcoholism. He had also filed bankruptcy. *Kamins* portrayed his shortcomings as a lawyer as being of *little substance and as excusable actions*. A psychiatrist who examined *Kamins* testified that *Kamins* was an anti-social personality, he had no remorse for his past actions and would probably repeat his past behavior patterns if given the opportunity. In his opinion *Kamins* blamed others for his problems and overlooked the importance of the past events and dismisses them as unimportant because of his concern over "greater issues". This was said to be characteristic of an anti-social personality, the ability to intellectualize and rationalize this behavior to make it appear acceptable. However, despite the guiding questions of his counsel, *Kamins* continued to offer explanations to rationalize his past actions.

31. The court observed that its duty was a grave one and reflected in a statement from the Supreme Court of Kansas in *State v. Russo, (* Kan. 1981), 630 P.2d 711. *Russo* basically set forth the eight factors to be considered in reinstatement later stated in *Wright*. Quoting *Kamins*;

> It is the duty of this court to review the evidence *in relation* to these factors and to make a determination based on the court's ***primary duty*** of safeguarding the interests of the public, the courts and the legal profession. In doing so the court balances the interest of the applicant against the fact that the very nature of the profession places an

attorney in a position where an ***unprincipled person*** may do tremendous ***harm to the public*** and to his clients. It is because of the great potential for harm that the burden on one seeking reinstatement is so great.

Kamins has: 1) not demonstrated a ***present moral fitness*** to practice law; 2) not demonstrated a ***consciousness of the wrongful nature of his past conduct*** and the consequences of those actions; and 3) not demonstrated a *rehabilitation* as to the lack of moral and ethical judgment which led to his behavior." Reinstatement ***denied***.

32. In *OBA* v. *Armstrong*, 848 P.2d 538(Okl.1992), the Bar sought to discipline Respondent for having been convicted of felony DUI, second offense, and sentenced to five years. But the court found there had been no complaints filed with the Bar, there was no evidence his former use of alcohol impaired his ability to conduct efficiently or properly the affairs undertaken for his clients in the practice of law, and no evidence that his crime has adversely affected his fitness to practice law. It is the applicant's "unfitness to practice law" that is the primary factor. *Discipline denied.*

33. In *Reinstatement of Hanlon*, 865 P.2d 1228(Okl.1993), *Hanlon* was disbarred as a result of drug related convictions for possession of and conspiracy to possess a controlled substance, aiding and abetting, and interstate travel to carry on illegal activity. He had not worked for nine years or actively sought employment, he was not in a regular program for alcohol abuse, his witnesses had little contact with him following disbarment, and he had not maintained his competency in the law. Reinstatement *denied*.

34. In *Reinstatement of Smith*, 871 P.2d 426(Okl.1994), *Smith* was a *State Senator,* chief executive officer and chairman of the board of a bank, was convicted of *17 convictions* for mail

fraud, willfully filing a ***false*** income tax return, willfully filing a ***false*** corporate tax return, and wilful ***failure*** to report an interest or signature authority over a foreign bank account. It involved a scheme to ***defraud*** by placing friends in positions as tag agents, and then diverting funds received from these agents. His actions were characterized as "using his office to interfere with the judicial processes of law enforcement." The primary issues were whether applicant would not commit any serious crime if readmitted, protecting the public welfare, and adverse effect on the Bar. The court focused on the seriousness of the *wrongful* conduct which resulted in his suspension. Reinstatement *denied*. The court also discussed *Hanlon* and *Page*.

35. In *Page*, 866 P.2d 1207 (Okl.*1993)*, the court refused reinstatement because of the seriousness of the criminal convictions. *Page* was convicted of four counts of the federal offenses of engaging in ***racketeering*** and ***extortion***. Page was an ***assistant district attorney and a special judge.*** The court also noted; *Kirk*, 804 P.2d 443, OK *1990*, applicant convicted of a federal offense involving ***fraud***, and was *reinstated. Crabtree*, 793 P.2d 296(Okl. 1990), applicant convicted of income ***tax evasion***, and was *reinstated. Cantrell*, 785 P.2d 312, (Okl. 1989), applicant convicted of attempted ***perjury*** by subornation and was ***reinstated***; *Samara*, 775 P.2d 806, (Okl.1989*)*, applicant convicted for felony income ***tax evasion*** and was *reinstated. Turner*. OK *1999*, 990 P.2d 861, reinstatement *denied* for failure to attend CLE for four years and admitted engaged in unauthorized practice of law.

36. *In re Brown*, 925 P.2d 44 (Okl.1996), (resigned 1989) applicant stipulated to 29 cases involving about 100 counts of ***embezzlement*** and ***forgery***, stated his misconduct was the result of his breakdown; diagnosed with ***anxiety disorder*** and ***phobia*** of practice of law and nine grievances filed. Noting that

Brown's original misconduct did not necessarily block his reinstatement, but the seriousness and exceptionally high number prevented reinstatement. *Denied.*

37. *State ex rel Okl. Bar Ass'n v. Hall*, 567 P.2d 975(Okl.1977) who was the sitting Governor of the State of Oklahoma, David Hall, having been convicted in Federal Court of ***extortion*, *conspiracy*** and ***bribery***. The court cited *Scanlon*, supra, and held that notwithstanding his many political supporters:

> First, the offense of respondent betrays a lack of moral stamina, and therefore a lack of moral character, which renders the respondent an unfit person to hold the office of attorney at law; and, second, the offense is of so grave a character as to call for serious treatment, not only as a matter of discipline to the respondent, but for its restraining influence upon others.

38. Then in *State ex rel. Okla. Bar Ass'n. V. Gresham*, 556 P.2d 264(Okl.1976), involved Ollie Gresham, a political ally of David Hall, supra, who pleaded guilty in Federal court to ***Perjury***. Again he produced over100 affidavits from politicians and friends and he was *suspended* for only *four years*.

39. The underlying reasoning of *Kamins* is, ".... where an unprincipled person may do tremendous harm to the public and to his clients. It is because of the great potential for harm that the burden on one seeking reinstatement is so great." In *Armstrong* it is whether his former conduct, ie. use of alcohol, impaired his ability to conduct efficiently or properly the affairs undertaken for his clients; and there was no evidence that his crime has adversely affected his fitness to practice law. *Hanlon* involved his having done nothing with his life for nine years, ie. by not working or even attempting to work, and he made no attempt to remain competent in the law. In *Smith* it is that from such a lofty perch he committed such serious crimes of

mistrust, fraud, interference with the judicial process. In *Page*, again, his position as an Asst. D. A. and Judge and the serious breach of public trust by racketeering and extortion. In *Brown*, it was his exceptionally high number of charges in such a short period of time, and his ongoing mental treatments. In *Hall*, it was a sitting Governor convicted of the worst conduct for a lawyer, extortion, conspiracy and bribery, all evidencing a lack of moral character and undermining the public trust.

40. And yet, *Cook*, a Judge stealing fine money was reinstated; *Kirk*, fraud, reinstated; *Crabtree*, tax evasion, reinstated; *Cantrell*, attempted perjury, reinstated; and *Samara*, tax evasion, reinstated. In *Gresham*, pleading guilty to perjury in federal court was only suspended for four years.

41. The seriousness of the wrongful conduct is important, but *only* insofar as it reflects on one's ***present*** fitness to practice law, in addition to the other factors. Whether the conduct was such that it undermines the public confidence in the system of justice or the reputation of the Bar. Acts such as lying, stealing, and cheating being foremost. Without more, assault and battery does not rise to that level, regardless of the seriousness of the assault. Alone, that does not undermine the public confidence in the system of justice or the reputation of the Bar, especially after thirty years.

Proposition II.

The Report of The Trial Panel of the Oklahoma Bar Association. does not comply with the Rules governing Reinstatement.

42. The Court in *Wright*, *supra*, held that the Report of the Bar Association is "merely advisory." In Reinstatement matters, the Trial Panel only has the limited authority to conduct a fact finding Hearing in accordance with the Rules of Civil

Procedure from all relevant evidence, submit a copy of the transcript of such evidence, and file a *Report* containing specific findings on each of three questions with the Court. In performing this limited task, the Trial Panel is authorized to proceed, essentially, under *Rule 11.3, Rule 6,* insofar as it is applicable, and *Rule 11.5.*

43.*Rule 11.3* provides, in part, as follows:

> .... the procedure, authority and powers of the Trial Panel shall be the same as those provided in Rule 6.

44. The applicable part of *Rule 6* only concern powers of the Trial Panel, adhering to the Rules of Civil Procedure, discovery, process, and standard of proof. The provisions of *Rule 6.13* concerning the *Report* of the Trial Panel ***only*** applies to ***Disciplinary Proceedings***. It authorizes a recommendation only for "*discipline*". Thus, this proceeding being one for reinstatement and not discipline, there is no "*discipline*" for the Bar to recommend. The Report of the Trial Panel in *reinstatement* matters is governed by *Rule 11.5,* which applies specifically to such proceedings.

45. *Rule 11.5* provides, in part, as follows:

> At the conclusion of the hearing held on the petition for ***reinstatement***, the Trial Panel of the Professional Responsibility Tribunal shall file a report with the Supreme Court, together with the transcript of the hearing. ***Said report shall contain specific findings upon each of the following:*** (Emphasis added)
>
> (a) Whether or not the applicant possesses the good moral character which would entitle him to be admitted to the Oklahoma Bar Association;
>
> (b) Whether or not the applicant has engaged in any unauthorized practice of law during the period of suspension, disbarment or resignation;

(c) Whether or not the applicant possesses the competency and learning in the law required for admission to practice law in the State of Oklahoma

46. The *Report* filed in this matter fails to comply with the applicable Rules as follows:

(a) The Report filed in this matter does not make the specific finding required by Rule 11.5(a).

(b) The Report is based, in part, on inadmissible evidence and thus is not in accordance with the Rules of Civil Procedure.

(c) The Report exceeds the authority of the Trial Panel provided by Rule 11.5 in that it purports to make a recommendation on Petitioner's reinstatement which is not authorized in Reinstatement proceedings under 11.5.

(d) The Report contains prejudicial comments and is based, in part, on matters outside the Record.

47. It is disturbing that neither the Bar Association's General Counsel nor the Trial Panel selected by the Bar to conduct the Hearing understood their role and authority in Reinstatement matters.

48. The *Report* filed does not contain a specific finding on question *11.5(a)*. One can only conclude, however, the Bar Association was in fact finding Petitioner does possess the requisite present good moral character from their favorable references to the Record to support such a finding. The *Report* does not number the paragraphs so the Court will need to rely on its own ingenuity to find the proper statement.

49. *Report*, page 2, third paragraph:

Since his release from prison, Mr. Seelye has become a productive member of society. He has functioned as a(sic)

fashion photographer and, in recent years, has worked for various lawyers. A number of witnesses, including lawyers for whom Mr. Seelye has worked, testified that he has been a ***model citizen*** *and that he possesses the intellect, training and education necessary to function as a lawyer if admitted to the bar. Mr. Seelye has regularly read the bar journal and, by working as a paralegal in various law offices, has kept up his familiarity with the law and legal developments.* (Emphasis added)

50. *Report,* page 4, second paragraph:

> .... *Mr. Seelye's conduct subsequent to being disbarred shows* ***no blemish*** *and it has now been thirty (30) years since the time of the original suspension.* (Emphasis added)

51. *Report*, page 4, third paragraph:

> ..... *However, there certainly is* ***no evidence*** *to suggest that Mr. Seelye would engage in such conduct again. In fact, over the past thirty (30) years there is nothing to suggest that Mr. Seelye has engaged in any illegal conduct.* (Emphasis added)

52. *Report*, page 6, third paragraph:

> .... *The witnesses who testified on behalf of Mr. Seelye were* ***very strong*** *in their regard for* ***his moral character*** *and their understanding of* ***his acceptance of guilt.***

53. *Rule 11.5* does not authorize nor request the Trial Panel for their interpretation of the evidence presented at the Hearing except insofar as it relates to the three questions. Nor does it authorize nor request the Trial Panel to make any judgment or recommendation concerning whether the applicant should or should not be reinstated. Thus any comments or interpretations of the evidence not bearing on the three questions or recommendations as to reinstatement of the Trial Panel are simply beyond their authority or role. The role of the Trial Panel is very simple and limited, *ie., make a finding of fact on three specific questions.* Nothing else!

54. The *Report* appears to confirm that the Petitioner has met his burden of proof on the three findings but then the Trial Panel exceeds its *Rule 11.5* authority by making additional determinations and recommendations. In order for the Court to properly analyze and interpret the *Report*, it should strike all matters therein except, to the extent possible, those dealing with the three findings the Bar is authorized to make. The *Report* contains mis-statements of facts from the record, it purports to base its conclusions on matters *de hors* the record, and the Report deals with matters which are totally irrelevant to the proceeding.

55. The *Report* does not refer to relevant evidence that even suggests the Petitioner does not have the present good moral character which would entitle him to be a member of the Oklahoma Bar Association. Without any evidence to the contrary and with the Trial Panel's statement on page 6 of their *Report, ie., "The witnesses who testified on behalf of Mr. Seelye were very strong in their regard for his moral character and their understanding of his acceptance of guilt"*, there can be no other logical conclusion but that the Trial Panel did find that Petitioner met the burden of proof on good moral character. On the other hand, it is fair to say that if the Bar Association's Counsel had found ***any*** shred of evidence to the contrary during the past seventy (70) years, they would have eagerly presented it.

56. The *Report* makes a specific Finding on question *11.5(b).*

Report, page 4, third paragraph:

The Trial Panel finds nothing in the record to indicate that

Mr. Seelye has engaged in the unauthorized practice of law.

57. The Report makes a specific Finding on question *11.5(c).*

Report, page 4, second paragraph:

Of the eight factors set forth in the Wright case, the PRT is convinced that factor number eight "present competence in legal skills" is clearly met by Mr. Seelye. He has worked as an assistant or paralegal in law offices for a number of years and the lawyers who have worked with him have nothing but the highest praise for his abilities.

58. *Report*, page 6, paragraph 4:

Mr. Seelye certainly proved his competency and learning in the law.

59. The *Report* should have stopped with this Finding. That is all the Trial Panel has the authority to do under *Rule 11.5.* However the *Report* goes much further and is clear evidence of the bias of the Trial Panel toward this Petitioner even before the conclusion of the Hearing.

60. Further, the Trial Panel cites *In re Wright* and makes reference to the eight factors that the ***Court*** will be considering on *de novo* review. The eight *Wright* factors are not applicable to the fact finding role of the Trial Panel in making their specific findings on three questions. There are no *Wright* factors involved in the Trial Panel's fact finding advisory *Report.*

61. The following are a ***few*** of the prejudicial comments, references to inadmissible evidence, and to matters outside the record of the Hearing that are simply wrong, inappropriate, and not within the authority of the Trial Panel and the same, as well as all such matters, should be stricken from the *Report.*

62. *Report*, page 2, as follows:

> *The assault and battery which led to the disbarment was a particularly violent act which led to enduring consequences. The full transcript of the trial was admitted into evidence as Exhibit CE 1A. The criminal case was appealed and led to an Opinion by the Court of Criminal Appeals which is entered into the record as Exhibit CE 1-B. The ten page Opinion by the Court of Criminal Appeals sets forth the majority of the pertinent facts relating to the underlying offense.*

63 To clarify, it was not the role of the Trial Panel to characterize the nature of the offense or its consequence. Nor was the trial transcript admissible. Petitioner's guilt was not an issue. It was not relevant as the Petitioner had already admitted his role in the matter and admitted his guilt for the offense and also because its admissibility is dependent on the Bar Association's Counsel having complied with the Rules of Civil Procedure by informing the Petitioner of their intent to do so prior to the Hearing in order to afford him the opportunity to prepare. (12 O.S.A. S. 2609) But they didn't. The Opinion of the Court of Appeals does not necessarily contain the "*facts*" relating to the offense but merely the testimony introduced at the trial which may or may not be the "*facts*" of the offense which the Trial Panel was aware of at the Hearing. Because someone testifies to his or her recollection of what occurred doesn't mean that is in *fact* what occurred. That is only his recollection. These statements in the *Report* are followed by a reference to the testimony of a particular witness at the trial as though such testimony was to be taken as "*fact*" and if the Petitioner testified differently, he was "*quibbling*" about the testimony. (Report p.5, second paragraph) If one witness testifies about a given matter one way and another witness testifies differently, that is not "*quibbling*". But that testimony was inadmissible in any event and should not have been relied on by the Trial Panel. The Petitioner's guilt was not in question. The Petitioner had already

admitted guilt and to attempt to "re-try" the Petitioner was highly prejudicial on the part of the Trial Panel further establishing their bias toward the Petitioner.

Report, p.5, second paragraph:

> *When asked to clarify his recollection of the testimony at trial he appeared to give an evasive answer. See, Transcript pages 215 - 216.*

65. The Court will obviously form its own assessment of whether the Petitioner's testimony was evasive on pages 215-216. The only question regarding *recollection* of trial testimony was asked by the Trial Panel Master which was on page 216, line 7:

Mr. Morgan:

> Q You don't recall what these guys said about you at trial?
>
> A Specifically no. I remember in general — I remember some things, yes ...

66. With all due respect, Petitioner submits such an answer is not being the least bit evasive. It is being honest and forthright. The trial in question occurred over 30 years ago Petitioner requests the Court to take judicial notice of the fact that one being unable to recall ***all*** of the exact testimony and by ***which*** witness it was given in a trial over 30 years previously is not being evasive. Actually the question was in two parts with an editorial comment by the Trial Master. The question begins on p.215, line 24:

> Q I'm having a little difficulty understanding some of your answers, in particular the answer you gave about these gentlemen's — or the assailants ***testimony at the trial not being important or relevant to you.***(Emphasis added)

67. This is a mis-statement of the record. What the Trial Master is referring to is that which he quoted in the *Report* on page 5. Petitioner challenges the record. ***Petitioner was not asked and did not testify at the Hearing that the testimony at the trial was not important or relevant to him.*** After the Bar Association's counsel clarified his question on p. 190, he asked, ".... you didn't have the ***opinion*** that they were lying at that time?" (Emphasis added) To which Petitioner replied, "It didn't matter. It wasn't pertinent. It wasn't an issue in the case, of what I thought." Which, of course, is an accurate statement. It didn't matter, it wasn't pertinent, and the question of whether the Petitioner did or did not have an ***opinion*** was not an issue in that case. The Trial Master is trying to read something into Petitioner's testimony which simply is not there and is prejudicial. Followed by the editorial comment of the Trial Panel Master, p.216, line 4, "*.... I get the feeling you're answering like a lawyer, instead of like a person, to be very honest with you.*" The Trial Panel Master correctly perceives the Petitioner's mental personality, *ie.*, he does think like a lawyer!

68. *Report,* page 5, second paragraph:

> *Mr. Seelye's testimony at the hearing brought to mind the deposition **tactics** of President William Clinton.* (Emphasis added)

69. Petitioner again challenges the record. There were no depositions of President Clinton introduced into evidence at the Hearing. The Petitioner has no idea which deposition the Trial Panel Master is referring to. The mere reference to the "deposition tactics of President William Clinton" coupled with the insinuation that the Petitioner's testimony was some sort of "***tactic***" is the most convincing example of the Trial Panel's bias against the Petitioner and the best evidence for his reinstatement.

70. *Report*, page 6, fifth paragraph:

> *Weighing against reinstatement are the seriousness of the original offense and Mr. Seelye's lack of candor about the offense.*

71. Without question the original offense was a serious offense. It was a felony. Again the Trial Panel reverts to the Bar Association's *pre-Wright* position that one convicted of a felony can never be reinstated. This becomes more painfully obvious given the overwhelmingly favorable support for the Petitioner demonstrated at the Hearing, the failure of the Bar Association's Counsel to offer ***any*** evidence of any other transgression or inappropriate behavior, and, in the words of the Trial Panel *Report*, *"Mr. Seelye's conduct subsequent to being disbarred shows no blemish and it has now been thirty (30) years since the time of the original suspension."* (P.4, second paragraph)

72. In response to the assertion of *lack of candor* about the offense, the Petitioner refers the court to his Petition and Affidavit filed in this matter, the Personal Information forms he completed for the Bar Association, his testimony at the Hearing, and the testimony of his five very strong witnesses, all of whom testified the Petitioner voluntarily told them about the offense without having been asked. Petitioner wrote a personal letter of apology admitting his guilt to *Albert* at his earliest possible opportunity. That hardly qualifies as a *lack of candor.*

73. Report, page 6, sixth paragraph:

> *Because the burden on the Petitioner is "clear and convincing evidence" the Trial Panel recommends against reinstatement.*

74. This Trial Panel does not have the authority under the Rule *11.5* to insert its prejudicial bias against the Petition and this

comment should be stricken from the *Report* and disregarded by the Court.

75. *Report*, p. 5, third paragraph:

> *Another factor which appears to cut against consciousness of the wrongful conduct is the fact that Mr. Seelye did not attempt to apologize, make restitution to, or even contact the victim until after the hearing before the PRT. On August 23, 2001, Mr. Seelye sent a letter to Dr. Shirkey. The letter is "Trial Panel Exhibit 1."*

76. Once again, the bias of the Trial Panel against the Petitioner is clearly evident by this prejudicial statement. Obviously the Trial Panel does not understand the meaning or role of "*restitution*" in reinstatement matters. *Albert* was not a client who suffered an economic loss due to the failure of Petitioner to perform some legal duty or fulfill an obligation under an attorney- client relationship. There was no fraud, cheating, larceny, or stealing involved. There was no claim or civil action by *Albert* against Petitioner for any damages associated with the offense. In short there was no circumstance to which "*restitution*" is even applicable. It is merely another improper and desperate attempt by the Trial Panel to prevent the Petitioner from being reinstated by any means.

77. The transcript of the Hearing reflects the only evidence concerning the Petitioner's attempt to contact *Albert* to admit the wrongfulness of his actions 31 years ago and to apologize. At page 174, line12, the Petitioner testified as follows: "As I testified earlier, I had asked my Mother and I had asked my counsel at the time — I told them that I thought the right thing to do was to apologize, because he hadn't done anything wrong to me. Suzanne hadn't done anything wrong to me. What I did was not right. It was wrong. That was not the way I was raised. Yes, I wanted to call and apologize. I was advised by both my

mother and my attorney at the time, Louis Levy – they both said, 'No. You're likely to be misunderstood. Just leave them alone. Let it go. If you make any attempt to contact them, it's likely to be taken the wrong way– so just let it go."

78. True to form, the Trial Panel continues to show its bias against the Petitioner by implying that Petitioner's testimony that even though he had no idea where they were living, he wanted to contact *Suzanne* and *Albert* many years ago to apologize.

79. The letter sent by Petitioner to *Albert* was purely a personal matter was ***not*** introduced into evidence and is ***not*** a part of the Transcript. The same should be stricken. And yet, the Trial Panel shows its bias against Petitioner by ***quibbling*** at the wording of a private letter and insinuates that Petitioner feigns a lack of memory of events 31 years ago.

80. The original offense was the only theme of the Bar Association's Counsel in its presentation at the Hearing and not surprisingly it attempts to infuse that same theme in the Trial Panel's *Report*. The terms and provisions of *Rule 11.5* could not be more clear and it is beyond impropriety for the Trial Panel to attempt to go further. It is as though the Trial Panel is attempting to conduct itself as though it was the Supreme Court. The Trial Panel is only authorized to make three rather simple Findings. It can do nothing more.

81. Simply put, the original offense was an enigma that arose from a lovers' triangle. There is no excuse for Petitioner's actions. It was one of those tragic, uncharacteristic, consequences of the sometimes inexplicable actions of lovers. The triangle ended, *Suzanne* and *Albert* were married shortly after the event and were then divorced 20 years ago. *Albert* has remarried. There was no similar incident by Petitioner in the 38 years prior to 1970 and there hasn't been another incident in the 31

years since 1970. The record is the best evidence of Petitioner's rehabilitation and the testimony of those that know him.

82. The fundamental aspects of character such as lying, cheating, or stealing are the classic elements of one deemed unfit to practice law, to enjoy the public trust and the trust of the courts. Those elements simply were not present in this case and has never been exhibited in Petitioner.

83. The Bar Association's Counsel and the Trial Panel unnecessarily burdened the size and cost of the record by introducing the complete transcript of the 1971 trial and selected ***portions*** of the 1977 Hearing on Petitioner's Application for reinstatement without asking Petitioner if he would stipulate to certain facts. The trial transcript served no relevant purpose whatsoever as the Petitioner was convicted in that matter and he admitted to the Trial Panel that he accepted sole responsibility for his wrongful acts. Under *12 O.S.A. § 2609*, evidence of a conviction thirty years ago is not admissible and the Bar Association's Counsel did not comply with the requirement to give Petitioner advance notice of its intent to attempt to introduce the trial transcript in order to have a fair opportunity to contest the use of such evidence. The only purpose of the actions of the Bar Association's Counsel was to effectively attempt to re-try the Petitioner for the same crime, thus skirting dangerously close to double jeopardy.

84. Based on Petitioner's Personal Information Forms, his testimony and that of five witnesses before the Trial Panel, his conduct during the past 31 years has been exceptionally good, as was his conduct for the 38 years prior to the offense. Since 1970, Petitioner has continued to make civic contributions; he has continued his serious study of the law; he has attended such *CLE* courses as he could afford; he has engaged in the continuous study of the Oklahoma Bar Journals since 1993; he has

continued his research and study of the law at Law Libraries and on the Internet; he has continued to provide for the support of himself and his family; he has not sought nor received any public welfare or other subsistence; he was not sued in a civil action for the subject offense; he was not ordered to make any restitution in this matter; he has not been charged or convicted of any criminal offense, other than minor traffic offenses; he has not had any problem with alcohol or drugs; he has not been sued for the collection of any debts; he has not filed Bankruptcy; he has fulfilled all child support obligations; he attends church; he is a registered voter and participates in elections; he became the father of a fourth son of whom he has had custody since 1987; he is happily married; he excelled in athletic competition after age 45; he became an internationally recognized and published fashion photographer; he has never been alleged to have lied, cheated, or stolen any money; and no one has ever filed any complaint with the Bar Association or any civil authority concerning the actions of Petitioner either before or after 1970.

85. The Bar Association's Counsel did not offer any evidence at the Trial Panel Hearing. However, by agreement of counsel, it was agreed that *Albert* could testify by deposition. None of *Albert's* testimony has any bearing on the issues to be considered by the court under *Wright* as his testimony should have only dealt with the experiences he had at the time of the incident. The *OBA* elicited inadmissable evidence from *Albert* concerning his physical limitations that have developed in the 31 years since the incident, including arthritis at age 68, which have no bearing on the issues in this matter and further evidence the efforts of the Bar Association's Counsel to re-try the Petitioner on the criminal matter and use this venue as a means of further punishment to the Petitioner, rather than dealing with matters that affect his present fitness to practice law. Had it not

been for the unique factors in this instance, this offense would not have occurred.

86. Unlike many past Applicants who were readmitted and had been guilty of a ***pattern*** of lying to clients and the courts, cheating clients, stealing money from clients, drug and alcohol abuse, massive debts, and a vast array of illegal or otherwise inappropriate behavior bringing severe disrespect on the institution of the Bar and the Courts, the Petitioner's original offense, though wrong and egregious, was but a single act arising out of a unique situation and does ***not*** involve a behavioral pattern of betrayal of the public trust, nor a pattern of disrespect for the principles of justice. As an outstanding law student and lawyer and his continuing excellence in his work in a law office, the Court can expect and rely on Petitioner to continue to bring respect and confidence to the Bar because of the contributions he will make to the profession.

87. The Bar Association's Counsel did not present any evidence relevant to Petitioner's character except the single, isolated act in 1970, to which the Petitioner had already admitted his sole responsibility and for which he had apologized, under oath, during the Trial Panel Hearing.

Proposition III.
The original Disciplinary Proceeding is void.

88. The Petitioner did not intend to raise the issue of the Supreme Court's lack of jurisdiction in the original Disciplinary Proceeding in 1971 (SCBD No. 2266). However, inasmuch as the Bar Association raised the issue at the *Trial Panel* Hearing, the Petitioner must now respond.

89. The core issue is one of jurisdiction. If the Supreme Court did not have jurisdiction in 1971 to enter Judgment against this Petitioner in a *Summary Proceeding*, its Order of Suspension

and Judgment of Disbarment are ***void*** and it is incumbent on the Court to correct that error. It is a question of whether the Petitioner was denied due process under the 14th Amendment to the United States Constitution.

90. It is axiomatic in American Jurisprudence that a court must possess *all* aspects of jurisdiction in a particular cause before it can render a valid judgment. Without complete jurisdiction, any order or judgment rendered by a court, other than a Dismissal, is an empty ceremony. We learn in Law School that it is "like a dead limb on the Judicial Tree which can be lopped off at any time." Jurisdiction cannot be conferred either by stipulation or the passage of time. A court either has it or it doesn't. It is rather like being a little bit pregnant. Jurisdiction consists of three aspects; jurisdiction over the subject matter, jurisdiction over the person or res, and jurisdiction to render the judgment which the court undertakes to make in the particular cause. Thus, ***any*** order or judgment by a court which is lacking in *any* of these three aspects is simply beyond the jurisdiction of the court and no amount of time can breathe life into a judgment that was a "dead horse" from the beginning.

91. The United States Supreme Court enunciated this fundamental principle of law 131 years ago in 1870 in the case of *Cooper v. Reynolds,* 10 Wall 308, 19 L.Ed. 93, wherein the court stated as follows:

> It is as easy to give a general and comprehensive definition of the word 'jurisdiction as it is difficult to determine, in special cases, the precise conditions on which the right to exercise it depends. This right has reference to the power of the court over the parties, over the subject-matter, over the res or property in contest, ***and to the authority of the court to render the judgment or decree which it assumes to make.***

> The power to render the decree or judgment which the court may undertake to make in the particular cause depends upon the nature and extent of the authority vested in it by law in regard to the subject matter of the cause. (Emphasis added)

92. In the 1971 proceedings the Supreme Court had exclusive jurisdiction over the subject matter, disciplining members of the Bar, and the court clearly had jurisdiction of the person, the Respondent, now the Petitioner. However, Petitioner respectfully submits, the Court did not have the jurisdiction to render the Order of Suspension or Judgment of Disbarment which it assumed to make in that proceeding.

93. The complainant, *OBA*, initiated the proceeding under Article X, Section 11, of the then applicable Rules (1966), which provides as follows:

> Upon receipt of a certified copy of the record of conviction of a member of the Association of *a felony involving moral turpitude*, —— if such conviction is not a final conviction of record, why such member should not be suspended until such judgment of conviction has become final and thereafter disciplined ...(Emphasis added)

94. The ***only*** record before this court in a *Summary Proceeding* is the Judgment and Sentence on Conviction. Petitioner concedes the crime of which he was convicted is a felony. However, the mere conviction of a felony, unless the element of *moral turpitude* is an inherent and essential element for every such conviction, is not sufficient to authorize the *OBA* to initiate a *Summary Proceeding* under Art. X, § 11 nor to vest jurisdiction in this court to proceed *summarily* with any disciplinary action against Petitioner.

95. Having raised the issue, challenging the Petitioner to explain and justify why and on what grounds he filed the 1991

Motion, and introduced the Motion into the record, the *OBA* has placed the issue squarely before the court for further review in this proceeding. To not do so, would be a further denial of due process to the Petitioner.

96. The court was without authority in 1971 to examine the facts and circumstances of the crime in a *Summary* Proceeding. That does not mean the *OBA* could not have proceeded under the Rules for a regular Disciplinary Proceeding, rather it is that they cannot proceed *summarily* in such an instance.

97. This court had occasion to examine this jurisdictional issue in *Oklahoma Bar Association v. Jones,* OK 1977, 566 P.2d 139 where the *OBA* relied on an essentially similar, though later, version of the Rules. In *Jones*, the attorney pled guilty to a federal crime involving improper campaign reporting. The *OBA* immediately instituted *Summary* Disciplinary Proceedings against the attorney. This court held as follows:

> Although the Rules have been amended since this proceeding was started, both the old and new Rules require that the crime involve moral turpitude before one may be disciplined in a summary proceeding............... Although a formal proceeding to discipline respondent could have been conducted under Art. 10, § 4(a) Rules-Bar Association, in the summary-type disciplinary proceeding authorized by § 4(b) and which are here involved, an important ***condition precedent*** must be satisfied. That condition is a member ***must have been convicted of a crime involving moral turpitude.***
>
> For the purpose of determining if there has been a conviction of a crime involving moral turpitude, we cannot consider the surrounding circumstances. In deciding whether moral turpitude is involved, ***we are limited to the charge contained in the documents permitted in the***

> ***origination of the summary proceedings of § 4 (b).*** (Emphasis added)

Jones, supra, was reviewed and affirmed by the court in *Wright*, supra.

98. More on point is the landmark case of *In re Rothrock*, (CA 1940), 106 P.2d 907. *Rothrock*, an attorney, had been charged on three criminal counts. Two were attempted murder while armed with a revolver, and one was assault with a deadly weapon, also a revolver. This was a disbarment proceeding predicated solely on his conviction of assault with a deadly weapon, based on a plea of guilty. The California law under which his disbarment was initiated is essentially identical to the Oklahoma Bar Rules, 1966, relied on in Petitioner's 1970 and 1971 proceedings. The court held:

> Section 6101 of the Business and Professional code provides:Conviction of a felony or misdemeanor, involving moral turpitude, constitutes a cause for disbarment or suspension as provided in section 6102.
>
> Section 6102 provides:
>
> Upon the receipt of the certified copy of the record of conviction of an attorney of a crime involving moral turpitude, the court shall suspend the attorney until judgment in the case becomes final. When a judgment of conviction becomes final, the court shall order the attorney disbarred.
>
> (1) It has been stated that the commission of an intentional and willful criminal act is indicative of an unfitness to be entrusted with the administration of the law, and that generally the conviction of a felony or other infamous crime is cause for disbarment. It is also stated, however, that where the courts have the power to investigate into the nature of the act, the attorney's name will not be stricken from the rolls where the nature of the particular crime does

not reflect a bad moral character with respect to the duties of the attorney's profession.

(2) The legislature of this state by the adoption of the foregoing Code section has recognized that a violation of the law, without more, does not necessarily brand the attorney committing the same as a person unfit to practice law. It has thus added the ***further requirement that in the commission of the crime moral turpitude must be involved.*** The legislature had made the record of conviction conclusive, but it has left the court the duty of deciding whether the particular crime involves moral turpitude. In case such as those involving convictions of murder, forgery, extortion, bribery, perjury, robbery, embezzlement and other forms of theft, no difficulty would attend the determination of the question of moral turpitude from a consideration of the record of conviction alone.

(3-4) the courts do not appear to have decided the question whether the conviction of an attorney on the charge of assault with a deadly weapon will require his disbarment on the ground that the offense involves moral turpitude. *In Re Hatch*, supra, this court stated that a conviction of simple assault and battery ***might*** indicate that moral turpitude was not involved. ***In the final analysis the purpose of any disbarment proceeding is not to punish the attorney*** — in the case of a criminal act he is amenable to punishment under the penal statutes — but is to afford protection to the public and to the profession by an investigation respecting the moral fitness of the attorney to continue in the practice of the law. (Citing cases)

Therefore, in convictions presenting doubtful cases on the question of moral turpitude, ***where the perpetrator of the offense is an attorney, the question whether the act involves moral turpitude properly may be resolved by a***

consideration of the nature of the offense as it bears upon his moral fitness to continue in the practice of the law. A consideration alone of the nature of the offense, therefore, may disclose that conviction thereof would not result in loss of the respect and confidence of his fellow-men, if that be the result of the consideration of the record of conviction alone, the conclusion may well be determinative of the question of moral turpitude, and the offense of which the attorney was convicted will be held not to involve moral turpitude. If however, the nature of the offense, considered alone or in connection with the record of conviction and the statutes defining the particular offense, does not disclose that the commission thereof would or would not cast discredit upon the attorney's moral fitness to practice law, then an ***investigation into the circumstances*** will be permitted.

In *Ex parte George*, D.C.. 180 P. 785, 786 (deportation under the immigration laws) the alien was convicted 'of a felonious assault and sentenced to four months imprisonment'. The assault consisted of his act in striking in a quarrel another Greek with a large piece of firewood. At the same time the brother of petitioner stabbed the same person with a knife.' ***The court said: 'it (the assault) certainly does not constitute a misdemeanor involving moral turpitude.'***

In Ciambelli ex rel. Maranci v. Johnson, D.C., 12 F.2d 465, 466, also a deportation case, the question was whether a conviction of assault and battery upon a police officer involved moral turpitude. The court observed that the indictment charged that Maranci was armed with a dangerous weapon, a razor, but that it was not charged nor claimed 'that the assault was made with the weapon'. The court said: 'it has been held that simple ***assault and bat-***

tery is not a crime involving moral turpitude (citing cases). ***But an assault is one of those offenses which may or may not, involve moral turpitude, depending upon the circumstances of the particular case.*** If one ordinarily law-abiding, in the heat of anger, strikes another, that act would not reveal such inherent baseness or depravity as to suggest the idea of moral turpitude. If, on the other hand, one deliberately assaulted an officer of the law with a dangerous weapon and with felonious intent, or for the purpose of interfering with the officer in the performance of his duty, ***the attendant circumstance*** showing an inclination toward lawlessness, ***the act might*** well be considered as one involving moral turpitude. Between the two lies the line of demarcation which I do not undertake to define accurately. I only determine which side of the line the facts of this case fall.' ***On the facts in that case the court concluded that the assault did not involve moral turpitude.***

(5-6) ***In the absence of a statutory definition indicating that evil intent is inherent in the commission of the crime, the courts generally are reluctant to classify the crime of assault with a deadly weapon as one involving moral turpitude as a matter of law.*** Where the question has arisen in disbarment proceedings, such conduct has been deemed not to call for disbarment as a matter of course.

.... ***That it did not involve moral turpitude in the particular case may be reflected by the record of conviction, which is all that is before the court in this proceeding.*** (Emphasis added)

99. Likewise, see *In re Larkin*, (CA 1989) 768 P.2d 604, *Hallinan v. State Bar* (CA) 421 P.2d 76; *In re Higbie*, 493 P. 2d 97; *Morrison v. State Board of Education*, 461 P.2d 375, "the right to practice one's profession is sufficiently precious to surround it with a panoply of legal protection .... and terms

such as 'immoral', 'unprofessional', and 'moral turpitude' constitute only lingual abstractions until applied to a specific occupation and given content by reference to fitness for the performance of that vocation"; *In re Johnson,* (AZ 1970) 471 P.2d 269, "Isolated incidents of this kind (two lawyers pummeling each other with brief cases) not involving a fixed pattern of misbehavior find ample redress in the criminal and civil laws. They have none of the elements of moral turpitude, arising more out of the infirmities of human nature"; *Muniz v. State* (TX 1978) 575 SW2d 208, conviction of felony must bear on the attorney's moral fitness to practice law; *In re Fahey,* (CA 1973), 505 P.2d 1369, in disciplinary proceedings the Supreme Court must resolve all reasonable doubts in favor of respondent in deciding whether particular act involves moral turpitude; *Lorenz v. Board of Medical Examiners* (CA 1956) 298 P.2d 537, circumstances in which the crime was in fact committed cannot be considered; moral turpitude must be inherent in the crime itself to warrant cancellation or suspension of a license because of the conviction; moral turpitude is not inherent in the crime itself unless a conviction in every case would evidence bad moral character; only if the minimum elements for a conviction necessarily involve moral turpitude and a conviction cannot be had without proof of facts showing moral turpitude can the conviction be held to be of an offense involving moral turpitude. 43 Harvard Law Review 117, essentially moral turpitude relates to truthfulness, honesty and moral character; as imported from the civil law, it covered such crimes as forgery, perjury, and dealing with false weights, stealing, larceny, embezzlement, burglary, receiving stolen property, false pretenses, conspiring to defraud and such; 24 Calif. Law Review 9, 16, "there are certain acts, in general accepted as not involving moral turpitude. Among these are assault and battery and violation of minor police regulations." (Emphasis added)

100. The Order of Suspension and the Judgment of Disbarment are *void* and always will be.

Conclusion.

101. The Petitioner has met his burden of proof by clear and convincing evidence in accordance with the Court's decisions in *Cook* and *Wright*. There is simply no evidence on any of the relevant factors to the contrary. The relevant evidence is overwhelmingly in support of the Petitioner and based on the record and evidence the Petitioner should be Reinstated to the Oklahoma Bar Association. Further, due to the lack of cooperation from the Bar Association for their failure to properly investigate the Petitioner and present those facts to the Trial Panel, and having unnecessarily burdened the record with documents without any relevance or admissibility in this proceeding, and the Trial Panel did not make any requisite finding in this regard, Petitioner requests the Court to assess all costs against the Bar Association. The law firm of Petitioner's counsel has only been involved in two reinstatement matters in the past 40 years, Judge Cook and the instant case. This case deserves the same result as *Cook*.

Dated this ___ day of November, 2001.

Respectfully submitted,

____

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I certify that on the ____ day of November, 2001, I mailed a true and correct of the foregoing document with postage prepaid, to:

Mr. Mike Speegle
Asst. General Counsel
Oklahoma Bar Association
P.O. Box 53036
Oklahoma City, OK 73152-3036

____

Albert R. Matthews

jrs

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

In the Matter of the)
Reinstatement of)
)
JOHN ROBERT SEELYE)*SCBD No. 4618*
)
To Membership in the Oklahoma)
Bar Association and in)
the Roll of Attorneys.)

PETITION FOR REHEARING

COMES NOW the Petitioner, by and through his attorney of record, Albert R. Matthews, and Petitions the court to grant a Re-Hearing in the above matter and in support thereof would show the court as follows:

A Petition for Re-Hearing in Reinstatement matters is allowed by *Rule 11.7* of the Rules Governing Disciplinary Proceedings.

This Petition for Re-Hearing is based on the following propositions:

I. The crime of assault and battery does not involve moral turpitude as an inherent and essential element thereof without which a conviction cannot be had in every instance.

II. This court did not have jurisdiction to disbar Petitioner in the original disciplinary proceeding under Summary Procedure based solely upon a conviction for assault and battery under the applicable Rules of this Court in 1971

III. A Judgment entered by a court that does not have the jurisdiction to enter such Judgment is void ab initio,

can be vacated at any time, and no amount of time can breathe life into something that is simply a dead limb on the judicial tree.

IV. Entering a Judgment of Disbarment which this Court did not have the jurisdiction to enter, is a taking of a valuable property right without due process under the 14th Amendment to the United States Constitution and the same should be vacated and the Petitioner restored to the Roll of Attorneys.

V. The failure of this court to conduct a de novo review of the relevant and admissible portions of the Transcript of the Hearing before the Trial Panel is a denial of due process under the 14th Amendment to the United States Constitution and its Order of Denial of Reinstatement should be vacated.

VI. The Trial Panel of the Oklahoma Bar Association does not have the authority under the Rules Governing Disciplinary Proceedings to make any recommendation in a Reinstatement matter and because the Court relied solely on the unauthorized recommendation renders the Order of Denial without any basis in law or fact and must therefore be vacated.

VII. The Rules Governing Reinstatement adopted by this Court are too vague and and do not provide an ascertainable or relevant standard by which one seeking reinstatement can rely on for guidance to attain reinstatement and is a denial of due process under the 14th Amendment to the United States Constitution.

VIII. The Petitioner's Motion for Oral Argument was never ruled on by the court.

PETITIONER'S BRIEF

Proposition I. The crime of assault and battery does not

involve moral turpitude as an inherent and essential element thereof without which a conviction cannot be had in every instance.

As a Freshman Law Student, assault and battery is usually the first tort and the first crime we study. Nowhere in the Treatises, Casebooks, or the reported cases is it ever mentioned that moral turpitude is an essential and inherent element in assault and battery without which a conviction, or judgment in a civil action, cannot be had in every instance.

Assault and battery is one of those torts or crimes in which moral turpitude may, or may not be involved depending on the facts and circumstances of the case. See *In re Rothrock*, (CA 1940), 106 P.2d 907, quoted extensively in Petitioner's Brief in Chief beginning on page 26. See also from Petitioner's Brief in Chief on pages 28-29, *In re Larkin,* CA 1989, 768 P.2d 604, *Hallinan v. State Bar*, CA, 421 P.2d 76, *In re Higbie*, CA 1971, 493 P.2d 97, *Morrison v. Board of Education,* CA 1969, 461 P.2d 375, *In re Johnson,* AZ 1970, 471 P.2d 269, *Muniz v. State*, TX 1978, 575 SW.2d 208, and *Lorenz v. Board of Medical Examiners*, CA 1956, 298 P.2d 537 where it was noted that the circumstances in which the crime was in fact committed cannot be considered, moral turpitude must be inherent in the crime itself to warrant cancellation or suspension of a license because of the conviction. Moral turpitude is not inherent in the crime itself unless a conviction in every case would evidence bad moral character. Only if the minimum elements for a conviction necessarily involve moral turpitude and a conviction cannot be had without proof of facts showing moral turpitude can the conviction be held to be of an offense involving moral turpitude.

The Treatise writer in 43 Harvard Law Review 117, states that essentially, moral turpitude relates to truthfulness, honesty and moral character, as imported from the civil law. It covered such crimes as forgery, perjury, and dealing with false weights, stealing, larceny, embezzlement, burglary, receiving stolen property, false pretenses, conspiring to defraud and such.

And in 24 Calif. Law Review 9, 16, the writer states, there are certain acts in general accepted as not involving moral turpitude. Among these are assault and battery and violation of minor police regulations.

The Court failed to address this issue in its Order of Denial. The failure of the Court to address this issue is a denial of *due process* under the 14th Amendment to the United States Constitution.

Proposition II. This court did not have jurisdiction to disbar Petitioner in the original disciplinary proceeding under Summary Procedure based solely upon a conviction for assault and battery under the applicable Rules of this Court in 1971.

Article IX, § 11 of the 1966 Rules governing a Summary Disciplinary Proceeding, the Rule under which the Petitioner was Suspended and then Disbarred, provides as follows:

> Upon receipt of a certified copy of the record of conviction of a member of the Association of a *felony involving moral turpitude* .... if such conviction is not a final conviction of record, why such member should not be suspended until such judgment of conviction has become final and thereafter disciplined.(Emphasis added)

The only record before the court in a Summary Proceeding is the Judgment and Sentence on Conviction. The facts and circumstances of the offense are not before the court and, indeed, cannot be considered by the court. Thus unless moral turpitude is an inherent and essential element of the offense itself without which a conviction cannot be had in every instance, the offense does not involve moral turpitude as required by the Rules.

This question was addressed by the Court in *Oklahoma Bar Association v. Jones,* OK 1977, 566 P.2d 139, where the Bar relied on a later though essentially similar version of the Rules. *Jones* pled guilty to a federal crime involving improper campaign finance reporting. The Bar filed a Summary Disciplinary Proceeding against *Jones*. The court held:

> Although the Rules have been amended since this proceeding was started, both the old and new Rules require that the crime involve moral turpitude before one may be disciplined in a summary proceeding ...... Although a formal proceeding to discipline respondent could have been conducted under Art. 10 § 4(a) Rules-Bar Association, ***in the summary-type disciplinary proceeding*** authorized by § 4(b) and which are here involved, an important ***condition precedent*** must be satisfied. That condition is ***a member must have been convicted of a crime involving moral turpitude.***
>
> For purposes of determining if there has been a conviction of a crime involving moral turpitude, ***we cannot consider the surrounding circumstances.*** In deciding whether moral turpitude is involved, ***we are limited to the charge contained in the documents permitted in the origination of the summary proceedings of § 4(b).*** (Emphasis added)

The court dismissed the Summary Proceeding against *Jones* based on a lack of jurisdiction.

Inasmuch as the Court did not have jurisdiction in *Jones* because of the absence of the requisite condition precedent, the court also lacked jurisdiction in the instant Summary Proceeding due to the absence of the same ***condition precedent***. There can be no other acceptable application of the law.

For some inexplicable reason, this issue has been avoided by the Court and ***never*** directly addressed in this matter. In its

Denial Order of February 12, 2002, the Court recognized that the issue had been raised in a 1991 Motion to Vacate the Original Judgment and stated, "...... we issued an order denying the motion to vacate on the ground that the issues raised had been considered in the 1971 opinion ...." A copy of the 1971 Opinion of this Court is attached as Exhibit "A" and incorporated herein. With all due respect to the Court, the issue of whether the offense of assault and battery involves moral turpitude as an inherent and essential element thereof without which a conviction could not be had in every instance such as to supply the ***condition precedent*** for a Summary Proceeding, was ***neither*** raised ***nor*** ruled on by the Court in the 1971 proceeding. In that Opinion the report of the Board of Governors of the Bar Association ***suggested*** there was a conviction of a felony involving moral turpitude but the subject issue was ***neither*** raised ***nor*** ruled on by the Court. The Petitioner challenges the record to confirm such a statement. It would have been impossible for the Court to have considered and ruled on an issue that was ***not*** presented to the Court. In any event, the real question remains, ***ie.*** whether the court ***actually*** had jurisdiction to do what it purported to do in the 1971 Summary Proceeding.

Proposition III. A Judgment entered by a court that does not have jurisdiction to enter such Judgment is void ab initio, can be vacated at any time, and no amount of time can breathe life into something that is simply a dead limb on the judicial tree.

It is fundamental in American jurisprudence that a court must possess all aspects of jurisdiction in a given matter before it can render a valid judgment. Without complete jurisdiction, any order or judgment rendered by a court, other than a Dismissal, is an empty ceremony. Jurisdiction cannot be conferred either by stipulation or by the passage of time.

Jurisdiction consists of three aspects. Jurisdiction over the subject matter, jurisdiction over the person or res, and ***jurisdiction to render the judgment which the court undertakes to make*** in a given cause. Any order or judgment by a court which is lacking in ***any*** of these three aspects of jurisdiction is a nullity and can never come to life.

The United States Supreme Court clearly established this fundamental principle of law 132 years ago in 1870 in the case of *Cooper v. Reynolds,* 10 Wall 308, 191 L.Ed. 93, wherein the court stated as follows:

> It is as easy to give a general and comprehensive definition of the word 'jurisdiction' as it is difficult to determine, in special cases, the precise conditions on which the right to exercise it depends. This right has reference to the power of the court over the parties, over the subject-matter, over the res or property in contest, ***and to the authority of the court to render the judgment or decree which it assumes to make.***
>
> The power to render the decree or judgment which the court may undertake to make in the particular cause depends upon the nature and extent of the authority vested in it by law in regard to the subject matter of the cause.(Emphasis added)

Thus, under *Cooper*, inasmuch as this court did not have the jurisdiction to proceed in a Summary Proceeding without having satisfied the ***condition precedent,*** any Order or Judgment entered herein was simply ***void ab initio*** as being beyond the jurisdiction of the court. It can ***never*** be corrected or cured. The determination of jurisdiction by any court is a threshold issue which the court should always address and determine *sua sponte.*

The Court failed to address this issue in its Order of Denial. The failure of the Court to address this issue is a denial of *due process* under the 14th Amendment to the United States Constitution.

Proposition IV. Entering a Judgment of Disbarment which this Court did not hcve the jurisdiction to enter, is a taking of a valuable property right without due process under the 14th Amendment to the United States Constitution and the same should be vacated and the Petitioner restored to the Roll of Attorneys.

The 14th Amendment to the United States Constitution provides, in part, as follows:

> ***.... nor shall any State deprive any person of life, liberty, or property, without due process of law ....***

The right to practice law is a valuable property right of which one may not deprived of without due process of law as guaranteed by the 14th Amendment. See *Conway v. State Bar,* CA 1989, 767 P.2d 657, "Attorney has property interest in right to practice his profession that cannot be taken from him without due process." *In re Delk,* N.C App. 1991, 406 S.E. 2d 601, "Practice of law is property right, and lawyer may not be deprived of that right without due process of law."

The United States Supreme Court has long recognized the principle that a judgment of a court lacking jurisdiction is void and violates *due process* under the 14th Amendment. In *Burnham v. Superior Court of California*, 1990, 495 U.S. 604, 110 S.Ct. 2105, a case involving *in person-am* jurisdiction, the Supreme Court, speaking through Justice Scalia stated as follows:

> The proposition that the judgment of a court lacking jurisdiction is void traces back to the English Year Books, see *Bowser v. Collins*, Y.B. Mich.22 Edw. IV, f. 30, pl. 11, 145 Eng.Rep. 97 (Ex. Ch. 1482), and was made settled law by Lord Coke in Case of the Marshalsea, 10 Coke Rep. 68b,

77a, 77 Eng. Rep. 1027, 1041 (K.B. 1612) Traditionally that proposition was embodied in the phrase *coram non judice*, 'before a person not a judge' — meaning in effect, that the proceeding in question was not a *judicial* proceeding because lawful judicial authority was not present, and could therefore not yield a *judgment*. American courts invalidated, or denied recognition to judgments that violated this common-law principle long before the Fourteenth Amendment was adopted. (Citing cases) In *Pennoyer v. Neff*, 95 U.S. 714, 732, 24 L.Ed. 565 (1878), we announced that the judgment of a court lacking personal jurisdiction violated the Due Process Clause of the Fourteenth Amendment as well.

Inasmuch as this Court did not satisfy the condition precedent to confirm the threshold issue of jurisdiction to enter a Judgment of Disbarment in a Summary Proceeding, the Judgment of Disbarment amounts to the taking of a valuable property right without due process under the 14th Amendment and is clearly void. The Judgment must be vacated and Petitioner restored to the Roll of Attorneys as of 1971.

Proposition V. The failure of this court to conduct a de novo review of the relevant and admissible portions of the Transcript of the Hearing before the Trial Panel is a denial of procedural due process under the 14th Amendment of the United States Constitution and its Order of Denial of Reinstatement should be vacated.

A "*de novo*" review means an ***actual*** review, a review "*anew*", of the entire Transcript of admissible and relevant evidence presented to the Trial Panel. The Petitioner suggests the Order of this court on February 12, 2002, does not represent ***any review*** whatsoever of the appropriate portions of the Trial Panel Transcript and thus is clearly not a "*de novo*" review. The Denial Order is a one-page order and does not review any of the evidence. How could this be a *de novo* review? It is no review at all. The Petitioner is entitled under Oklahoma law to a *de novo* review by the Court of all of the evidence presented to the Trial Panel of the Bar Association based on the Court's ruling of what evidence is admissible and relevant. Otherwise there is no *de novo* review! Thus, having been denied a *de novo* review, the Petitioner has been denied due process under the 14th Amendment, and the Denial Order should be vacated.

This court adopted the standard of review in reinstatement matters in the case of *Reinstatement of Wright*, OK 1995, 907 P.2d 1060. In *Wright*, quoted at pages 9-10 of Petitioner's Brief in Chief, the Court stated as follows:

> This court has further looked at eight factors it has deemed relevant in reinstatement proceedings. They are 1) present moral fitness; 2) demonstrated consciousness of wrongful conduct and disrepute conduct has brought on the profession; 3) extent of rehabilitation; 4) seriousness of original conduct; 5) conduct subsequent to discipline; 6) time elapsed since original suspension; 7) character, maturity and experience at time of discipline; and 8) present competence in legal skills.
>
> The Oklahoma Bar Association, through the General Counsel, initially .... took the position that an attorney with a felony conviction should never be allowed reinstatement by this Court. However, ... the General Counsel has receded from this earlier position ... given our prior cases he cannot present argument against reinstatement and that he realizes that each decision on reinstatement must be made on a case-by-case basis. We believe the General Counsel was correct to recede...
>
> In support of his initial position the General Counsel

brought to our attention no rule which would prohibit reinstatement in all instances to one convicted of a felony No rule was brought to our attention because there is no such rule.

However, in *Matter of Reinstatement of Cook, supra*, we granted reinstatement to an applicant convicted of a felony who showed by clear and convincing evidence that he had been rehabilitated and was of high moral character. See also *Matter of Reinstatement of Crabtree*, 793 P.2d 296 (Okl.a1990), *Matter of Reinstatement of Cantrell, supra*. These latter cases illustrate that our rules provide that those persons who comply with the high standards required for reinstatement should be and are sometimes permitted to resume the practice of law, notwithstanding conviction of a felony.

However, in the instant case, there was ***no*** review whatsoever of any of the eight factors pronounced in ***Wright*** which the court deemed to be relevant in reinstatement matters. If those eight factors were relevant in ***Wright,*** and later cases, why were they not deemed relevant in this case? A failure to adequately review this case is to not review it at all, which is exactly what the one-page Order reflects. Such a failure to review is a denial of due process under the 14th Amendment to the United States Constitution and the Court's Order of Denial should be vacated.

Proposition VI. The Trial Panel of the Oklahoma Bar Association does not have the authority under the Rules Governing Disciplinary Proceedings to make any recommendation in a Reinstatement matter and because the Court relied solely on that unauthorized recommendation renders the Order of Denial without any basis in law or fact and must therefore be vacated.

The court further erred in relying on the Trial Panel's "*rec-*

ommendations". As noted in Petitioner's Brief in Chief, the findings of the Trial Panel authorized by *Rule 11.5* do not include the authority to make ***any*** "recommendation" in a *Reinstatement* matter. The only proceeding in which a Trial Panel is authorized to make a "recommendation" is in a *Disciplinary* matter under *Rule 6.13.* It should go without saying, but the Panel can only recommend *"discipline"* to one who is subject to "*discipline*". Inasmuch as Petitioner was dismembered by the 1971 Judgment, he is no longer a member of the Bar and thus not subject to any *"discipline"*. That privilege is reserved to those who are licensed members of the Bar.

Petitioner should apparently point out that the subject proceeding is a *Reinstatement* proceeding under *Rule 11*, ***not*** a *Disciplinary* Proceeding under *Rule 6,* and *Rule 6.13* clearly does not apply. In a *reinstatement* matter under *Rule 11,* the Trial Panel has the limited authority to make three findings which does not include the authority to make any recommendation. To the extent the Trial Panel exceeded its limited authority, ***any*** recommendation should be stricken from its Report by the court. And the Denial Order of this court which purports to rely ***solely*** on such a recommendation is therefore without basis in law and in fact and should be reversed.

The Order of Denial was not based on a *review* of the Trial Panel Hearing transcript by any stretch of the imagination. The Order was simply a rubber-stamp of the Trial Panel's unauthorized recommendation. The Order states, "Finding that the attorney had not presented clear and convincing evidence sufficient to support reinstatement, the trial panel issued a report on November 6, 2001, recommending that the attorney not be reinstated. ....THE COURT DETERMINES THAT: .... 3) The attorney has not presented clear and convincing evidence sufficient to support reinstatement." But the court does not state how and in what manner the evidence was not clear and convincing. The court does not state what was lacking in the evidence to support reinstatement. Actually, the court does not state anything. To suggest that this conclusory statement is any basis for the Court's Denial Order is totally without merit.

Rule 11.4, states, in part as follows:

> An applicant for reinstatement must establish affirmatively that, if readmitted or if the suspension from practice is removed, the applicant's conduct ***will*** conform to the high standards required of a member of the Bar. (Emphasis added)

That is the ***only*** requirement imposed on one seeking reinstatement, *ie.* ".... the applicant's conduct ***will*** conform to the high standards required of a member of the Bar." The standard is prospective, that is to say "the applicant's conduct ***WILL*** conform ...".. A cursory review, not even a *de novo* review of the record would have revealed that in the past ***70 years*** there has been only ***one*** transgression by the applicant. Prior to the incident which arose out of a lover's triangle and subsequent to the incident 32 years ago, the applicant has led an exemplary life, excelled in a variety of endeavors, was an excellent law student, earned three degrees, was an excellent lawyer, contributed extensively to community service, and has continued in the study of the law almost continuously since 1971. So with an unblemished record for the past 32 years, which was admitted by the trial panel and the Bar General Counsel, there is not even a scintilla of evidence in the record to suggest that the applicant's conduct henceforth ***will not*** conform to the high standards required of a member of the Bar. Surely if the court actually conducted a *de novo* review it would have been able to suggest ***one*** occurrence in the past 32 years which would support a conclusion that the applicant's conduct hereafter ***will not*** conform to the high standards required of a member of the Bar. Obviously there was none, rendering the court's one-page Order without any basis in law or in fact. The Order should be vacated as being without any merit.

The Court failed to address this issue in its Order of Denial. The failure of the Court to even address this issue is a denial of due process under the 14th Amendment to the United States Constitution.

Proposition VII. The Rules Governing Reinstatement adopted by this Court are so vague and do not provide an ascertainable or relevant standard by which one seeking reinstatement can rely on for guidance to attain reinstatement and is a denial of procedural due process under the 14th Amendment to the United States Constitution.

31. Rule 11.4 Standard of Proof for Petitions for Reinstatement, provides, in part, as follows:

> An applicant for reinstatement must establish affirmatively that, if readmitted or if the suspension from practice is removed, *the applicant's conduct will conform to the high standards required of a member of the Bar.* The severity of the original offense and the circumstances surrounding it shall be *considered* in evaluating an applicant for reinstatement. The burden of proof, by clear and convincing evidence, in all such reinstatement proceedings shall be on the applicant. An applicant seeking such reinstatement will be required to present stronger proof of qualifications than one seeking admission for the first time. The proof presented must be sufficient to overcome the Supreme Court's former judgment adverse to the applicant. (Emphasis added)

The fundamental test deals with an evaluation of what the applicant's *future* conduct is likely to be. In simple terms, the applicant must establish that his conduct in the future ***will*** conform to that required by a member of the bar. Obviously the applicant has been found to be errant in some way in the past or he would not have been suspended or disbarred. So the only question is what are the present *indicia* of conduct, based upon which the court can draw some conclusions as to his likely behavior in the future. Whatever he did in the past that caused his suspension or disbarment is only to be *considered* in making this evaluation of likely future conduct. Since the question is his fitness to be reinstated, that which he did in the past is not *controlling*, but is merely *considered* as an indication of future conduct.

That is the only Standard of Proof required under the Rules for reinstatement. Yet, in *Wright*, and cases following, the Court sought to expand and enlarge the factors it will consider in reinstatement. So the question becomes, *exactly what is the conduct required of a member of the Bar?*

The Rules do not specify the nature of the conduct required of a member of the Bar. The Rules do not specify how an applicant for reinstatement may, can, or must show or demonstrate that in the future he will so conform. It is not that the Standard is objectionable, it is only that there is no basis, no guidelines, by which one will know what they must present and what is or is not "*conduct required of a member of the Bar*" The obvious problem is that the Court simply makes up the rules as it goes. An applicant can never know, in advance, exactly what the rules are, what the standards are, by which he will be judged. What may be acceptable in a given reinstatement may not be acceptable in another. It is like trying to hit a moving target. The court has reinstated an applicant who was a sitting judge that stole money paid to him for fines; applicants were reinstated who committed forgery, larceny, lied about income taxes, wrote bogus checks, stole client funds, were incompetent to handle client matters, and other acts of lying, cheating, and stealing. What standards did the court apply to determine that their future conduct would be that required of a member of the Bar? No one knows. The court doesn't know. The standards are rather like the magician that pulls a rabbit out of the hat, makes playing cards disappear, or other slight of hand tricks. Such "standards" are too vague and nebulous to be any standard at all. To fail to set and follow known, acceptable, meaningful, standards for reinstatement is to have no standards at all. Without acceptable, appropriate standards for one seeking reinstatement is to deny *due process* under the 14th Amendment.

Proposition VIII. The Petitioner's Motion for Oral Argument was never ruled on by this Court.

35. Oklahoma Supreme Court Rule 1.9 provide that oral argument is not a matter of right but is in the discretion of the Court. Here, however, the Court failed to exercise its discretion to either grant or deny the Petitioner's Motion. Petitioner re-asserts his Motion for Oral Argument in this matter.

WHEREFORE, Petitioner respectfully Petitions the court to grant a Re-Hearing in this matter and grant Petitioner's Motion for Oral Argument, and that upon such Re-Hearing the 1971 Judgment of Disbarment be vacated and Petitioner restored to the Roll of Attorneys, or, alternatively, that the Order of Denial of February 12, 2002, be vacated and Petitioner reinstated to the Roll of Attorneys.

Dated this 28th day of February, 2002.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on the 28th day of February, 2002, I mailed a true and correct copy of the foregoing Petition with postage prepaid, to:

Mr. Mike Speegle
Asst. General Counsel
Oklahoma Bar Association
P.O. Box 53036
Oklahoma City, OK 73152-3036

Albert R. Matthews

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

IN THE MATTER OF THE)
PETITION OF:)
)
JOHN ROBERT SEELYE) SCBD #4618
)
FOR LIMITED REINSTATEMENT)
TO THE ROLL OF ATTORNEYS,)
)
PRO HOC VICE,)

TRANSCRIPT OF PROCEEDINGS
AUGUST 2, 2001
IN OKLAHOMA CITY, OKLAHOMA

* *

APPEARANCES:

TRIBUNAL: Mr. J. Daniel Morgan, Presiding Master
Mr. John Patrick Kent, Lawyer Member

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(405) 235-3376
REPORTED BY: RONDA M. CROWE, CSR

Page 185, Line 7 through Page 189, Line 7:

BY MR. SPEEGLE:

Q Mr. Seelye, will you look at Exhibit No. 7, please?

A Yes.

Q Will you tell the trial panel what that is, please?

A It appears to be a copy of a document filed in the Supreme Court, in Bar Case No. 2266, in 1991.

Q Is that your signature on that document?

A I believe it is. It appears to be a copy of it, yes.

Q What was your purpose for filing that?

A Do you want me to read the document? It's got its purpose stated.

Q Yes, please, if you will.

A It's a motion to vacate judgment and dismiss proceedings.

I don't think we need to read the whole thing. We've got it in the record.

"Comes now the Respondent, John Robert Seelye, and moves the Court to vacate, set aside, and hold for naught the judgment entered herein on October 26, 1971" - -

MR. MORGAN: We can read it. If you want to read it to yourself, to familiarize yourself - -

MR SEELYE: No. I wrote it, so I know what it says.

BY MR. SPEEGLE:

Q |Will you go to Page 2 of that document, please?

A (Complies)

Q Go to about the middle of that paragraph, where it says, "Respondent should be allowed to reinscribe his name on the roll of attorneys" - -

A Yes.

Q - - "complainant ordered to reinstate respondent as a member in good standing as of April 2, 1971, with all dues or assessments respondent would have been required to pay during the 20-year period of his having been wrongfully deprived of the right to practice his profession."

Can you tell this trial panel how you were wrongfully deprived of your right to practice law, as you allege in this document filed in 1991?

A Well, the document speaks for itself. It's a filing in court. It's an assertion of a position and argument. It's a motion to vacate an order, and that is, in part, the legal premise for seeking that resolution.

Q Can you tell the trial panel how you were wrongfully deprived of your right to practice law?

A Well, the Court didn't have jurisdiction.

Q Will you explain that, please?

A Yes. If the panel is not familiar with the Rules of 1976, governing disciplinary actions - - I can't quote all of them, but, in essence, they were in effect in 1970 and '71.

Part of the rules is what's called a summary proceeding. In a summary proceeding, all that the Bar Association is required to do is to file a certified copy of a judgment and sentence on conviction if a person is convicted of a crime - - felony involving moral turpitude as a part of the crime, which is the way the Bar proceeded in this case.

Therefore, there was no hearing. There was no testimony or evidence introduced, merely the document, the judgment and sentence. So that's all the Court had before it.

Under the rules, the order for the Court to have jurisdiction of a summary proceeding, the crime had to involve as a part of it the element of moral turpitude.

The crime of assault and battery does not, of itself, necessarily involve moral turpitude. It may or may not, depending on what the facts are.

Since the facts were not before the Court, nor could they have been under a summary proceeding, the Court didn't have jurisdiction.

The Court so held that in a later case, Bar Association versus Jones, a former congressman who pled guilty in federal court to having violated the Federal Contribution Act, or what ever it's called.

The Bar Association, of course, filed a summary proceeding, and the Supreme Court promptly held that, since the crime does not necessarily inherently involve the element of moral turpitude, they didn't have jurisdiction for a summary proceeding. Therefore, they dismissed the action.

That's the ruling of the Oklahoma Supreme Court.

CERTIFICATE

STATE OF OKLAHOMA)
) SS.
COUNTY OF OKLAHOMA)

I, RONDA M. CROWE, Oklahoma Certified shorthand Reporter, certify that the witnesses were by me sworn to testify the truth; that the hearing was taken by me in stenotype and thereafter transcribed, and is a true and correct transcript of the testimony of the witnesses; that the hearing was taken on the 2nd day of August, 2001, at 9:30 a.m., in the City of Oklahoma City, County of Oklahoma, State of Oklahoma; that I am neither attorney for nor relative of either of said parties, or otherwise interested in the event of said action.

Witness my hand and seal of office on this 10th day of August, 2001.

/s/ Ronda M. Crowe
Ronda M. Crowe, CSR
Oklahoma Certified
Shorthand Reporter,
CSR #01747

[STAMP]:

Ronda M. Crowe
Oklahoma Certified Shorthand Reporter
Certificate No. 01747
Exp. Date: December 31, 2002